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Supreme Court of the United States

OCTOBER TERM, 1962

No. 424

I. A. WATSON, JR., ET AL., PETITIONERS,

vs.

CITY OF MEMPHIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1962
CERTIORARI GRANTED NOVEMBER 19, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

No. 14,662

I. A. Watson, et al., Plaintiffs-Appellants,

—vs.—

City of Memphis, et al., Defendants-Appellees.

Plaintiffs' Appendix—Filed August 26, 1961

A. W. Willis, Jr., 558 Vance Avenue, Memphis, Tennessee.

Thurgood Marshall, Constance Baker Motley, 10 Columbus Circle, New York 19, New York.

Elwood H. Chisolm, B. L. Hooks, C. O. Horton, B. F. Jones, H. T. Lockard, R. B. Sugarmon, Jr., Of Counsel.

[fol. 1]

In United States District Court
For the Western District of Tennessee
Western Division

Docket Entries

May 13, 1960	Filed Complaint
June 3, 1960	Filed Order Enlarging Time to File Answer to 7-1-60
June 8, 1960	Filed Order Enlarging Time for Answer
July 1, 1960	Filed Answer of Defendants
September 28, 1960	Filed Notice of Taking Depositions

November 4, 1960	Filed Depositions of Harold S. Lewis, Marion Hale, John R. Gorman, E. C. Barwick and Robert Schuyler
November 16, 1960	Filed Motion to Advance Date of Trial and for Consolidation for Trial
April 7, 1961	Filed Order Substituting Party Defendant—Mrs. W. Jeter Eason substituted for Leon Bearman
June 20, 1961	Filed Judgment
June 27, 1961	Filed Findings of Fact and Conclusions of Law
July 7, 1961	Filed Notice of Appeal
July 7, 1961	Filed $250 Appeal Bond
July 17, 1961	Filed Transcript of Evidence in Two Volumes

[fol. 2]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

COMPLAINT—Filed May 13, 1960

Jurisdiction

I

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, §1343(3), this being a suit in equity which is authorized by law, Title 42, United States Code, §1983, to be brought to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges, and immunities secured by the Constitution and laws of the United States or by any Act of Congress providing for equal rights of citizens. The rights here sought to be redressed are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution

of the United States and Title 42, United States Code, §1981, as hereinafter more fully appears.

Type of Proceeding

II

This is a proceeding for a permanent injunction, enjoining defendants, and each of them, their agents, employees and successors from continuing their policy, practice, custom and usage of operating public recreational facilities in the City of Memphis, Tennessee, on a racially segregated basis and enjoining them from continuing to exclude Negro citizens and residents of Memphis from certain public facilities, solely on account of race and color.

III

This is a proceeding for a declaratory judgment, pursuant to the provisions of Title 28, United States Code, [fol. 3] §§2201 and 2202, for the purpose of determining the following questions in actual controversy between the parties.

A. Whether defendants may continue to enforce any ordinance, regulation, policy, custom or usage of operating public recreational facilities under their jurisdiction, management or control in the City of Memphis on a racially segregated basis.

B. Whether defendants may continue to exclude the plaintiffs and members of their class from certain public recreational facilities owned and operated by defendants or owned and leased by the defendants, solely because of the race and color of the plaintiffs and members of their class.

IV

This is a proceeding brought by the plaintiffs on behalf of themselves and on behalf of other persons similarly situated, pursuant to the provisions of Rule 23(a)(3) of the Federal Rules of Civil Procedure. The class of persons on behalf of whom the plaintiffs sue consists of Negro citizens of the State of Tennessee who reside in the City

of Memphis, Tennessee, and who, by virtue of these facts, are entitled to use and enjoy the recreational facilities which are owned and operated by defendants for the use and enjoyment of the general public and which are owned and leased by defendants for operation by the lessee, for use and enjoyment of the general public, and who are all similarly affected by the enforcement by defendants of their policy, practice, custom and usage of operating public recreational facilities in the City of Memphis on a racially segregated basis, pursuant to which plaintiffs and members of their class are denied the right to use and enjoy [fol. 4] certain public recreational facilities on the same terms and conditions applicable to white persons in the City of Memphis. Said persons constitute a class too numerous to be brought individually before this Court, but there are common questions of law and fact involved and a common grievance arising out of a common wrong and a common relief is sought for plaintiffs herein named and for each member of the class. The interests of said class are fairly and adequately represented by the named plaintiffs.

Plaintiffs

V

Plaintiffs are I. A. Watson, Jr., T. W. Northcross, Sr., W. O. Speight, Jr., A. E. Horne, Sr., Melvin Malunda, Johnny Gholston, Harold Gholston, Alfred Haynes, Jr., John Rogers, Thomas Pugh, and Curtis King. Each plaintiff is an adult Negro citizen of the United States and of the State of Tennessee, residing in the City of Memphis, Tennessee. Each plaintiff's real or personal property is taxed by the defendant City of Memphis for the purpose of supporting public recreational facilities which are constructed, maintained, operated or leased by the defendants. Each plaintiff is ready, willing and able to pay any uniform fees or charges which may be required by defendants from all members of the public alike for the use and enjoyment of public recreational facilities and is ready, willing and able to abide by all rules and regulations promulgated by defendants with respect to the use and enjoyment of such facilities which are applicable alike to all persons desiring to use such facilities.

[fol. 5] Defendants

VI

Defendants are the City of Memphis, Tennessee, a public body corporate which has been organized and which exists under and pursuant to the laws of the State of Tennessee. The City of Memphis has been authorized and empowered by the laws of the State of Tennessee to establish a Park Commission, name the members thereof, fix their compensation and terms of office, and establish by ordinance the rules and regulations which may be necessary to govern such Park Commission. Defendants Hafry Pierotti, E. C. Barwick, Leo Bearman, John Gorman and Walker Wellford, Jr., have each been duly appointed and named by the defendant City of Memphis a member of the Board of Directors of the Memphis Park Commission and each is presently serving in such capacity. These defendants have under their jurisdiction, management and control, the public recreational facilities referred to in this complaint. Defendant H. S. Lewis is the duly appointed and acting Superintendent of the Memphis Park Commission and is the chief administrative officer of said commission.

Claim for Relief

VII

Acting under color of the authority conferred upon them by the laws of the State of Tennessee and the ordinances of the City of Memphis, the defendants have adopted and are presently pursuing a policy, practice, custom and usage of operating public recreational facilities in the City of Memphis on a racially segregated basis. Pursuant to this [fol. 6] policy, practice, custom and usage, defendants restrict the use of certain public recreational facilities to use and enjoyment by white persons only and restrict the number of public recreational facilities which may be used and enjoyed by Negroes. Pursuant to this policy, practice, custom and usage, there are certain public libraries, parks, playgrounds, golf courses, boat docks and lakes which may be used by white persons only and there are certain public libraries, parks, playgrounds, golf courses, boat docks and

lakes which may be used by Negro persons only. The number of libraries, parks, playgrounds, boat docks and lakes and golf courses which may be used by white persons only far outnumber such facilities which may be used and enjoyed by Negro persons only. With respect to the public art galleries and museums, use of such facilities by Negroes is limited to one day per week while such facilities may be enjoyed by white persons on all of the other days of the week. The policy, practice, custom and usage which is complained of here is based solely upon race and color and is enforced by defendants' employees at all of the public recreational facilities referred to herein.

The plaintiffs and members of their class have attempted to use and enjoy those public facilities referred to above which are limited by defendants to use and enjoyment by white persons and have been denied the use and enjoyment of same solely on account of their race and color.

On March 31, 1960, at approximately 9:00 a.m., plaintiffs I. A. Watson, Jr., W. O. Speight, Jr., A. E. Horne, Sr., and T. W. Northcross, Sr., went to the Pine Hill Golf Course, a golf course owned and operated by defendants for the use and enjoyment of white persons only, for the purpose of using and enjoying same and were denied the right to use the same by defendants' employees solely because of their race and color.

[fol. 7] On April 10, 1960, at approximately 2:00 p.m., plaintiff Melvin Malunda went to the Boat Dock at McKellar Lake and sought to use said facility but was denied the use and enjoyment of same by defendants' employees solely because of his race and color. Said Boat Dock is owned and operated by defendants for the exclusive use of white persons.

On April 27, 1960, at approximately 1:40 p.m., plaintiffs Johnny Gholston, Harold Gholston and Alfred Haynes, Jr., went to Brooks Art Gallery for the purpose of enjoying same but were refused admission thereto by defendants' employees solely because of their race and color.

On April 27, 1960, at approximately 3:30 p.m., plaintiffs Johnny Gholston, Harold Gholston and Alfred Haynes, Jr., went to the John Rogers Tennis Court for the purpose of using and enjoying same but were denied the use and

enjoyment of same by defendants' employees solely because of race and color. The John Rogers Tennis Court is owned and operated by defendants for exclusive use and enjoyment of white persons.

On April 29, 1960, at approximately 1:15 p.m., plaintiffs Thomas Pugh and Curtis King were denied admission to the Pink Palace Museum by defendants' employees solely because of their race and color. The Pink Palace Museum is owned and operated by defendants.

In denying the plaintiffs the use and enjoyment of these facilities at the times referred to herein, the defendants' employees were acting pursuant to and were enforcing the racial policy complained of herein.

In the past, when certain members of plaintiffs' class have insisted upon using and enjoying said white facilities, defendants have caused such persons to be arrested and charged with trespass and other violations of the criminal laws of the State of Tennessee, solely on account of the race and color of these persons.

[fol. 8] Irreparable Injury

VIII

Enforcement of the policy, practice, custom and usage of operating public recreational facilities in the City of Memphis on a racially segregated basis, pursuant to which plaintiffs and members of their class are excluded from certain facilities, solely because of race and color, has resulted in irreparable injury to the plaintiffs and members of their class and is in violation of the constitutional and civil rights of the plaintiffs and members of their class.

Wherefore, plaintiffs respectfully pray that upon the filing of this complaint this Court advanced this case on the docket and order a speedy hearing of same and upon said hearing this Court:

1. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment;

2. Issue a permanent injunction enjoining defendants and each of them, their agents, employees and successors and all persons in active concert and participation with them from operating the public museums, art galleries, libraries, golf courses, tennis courts, playgrounds, parks, boat docks and lakes and other recreational facilities of the City of Memphis, Tennessee, on a racially segregated basis and enjoining defendants from enforcing any ordinance, regulation, policy, practice, custom or usage which restricts and/or limits plaintiffs, and other Negro residents of the City of Memphis, Tennessee, in their rights and privileges of enjoying and using the said public recreational facilities [fol. 9] and services of the City of Memphis, Tennessee, and enjoining defendants from refusing plaintiffs, and other Negro residents similarly situated, the right to use and enjoy such facilities on the same terms and conditions applicable to white persons in the City of Memphis;

3. That plaintiffs have such other, additional or alternative relief as may appear to the Court to be equitable.

4. Grant plaintiffs their costs herein.

A. W. Willis, Jr., 588 Vance Avenue, Memphis, Tennessee; R. B. Sugarmon, Jr., 588 Vance Avenue, Memphis, Tennessee; H. T. Lockard, 322½ Beale Street, Memphis, Tennessee; B. L. Hooks, 588 Vance Avenue, Memphis, Tennessee; B. F. Jones, 211 South Third Street, Memphis, Tennessee; C. O. Horton, 145 Beale Street, Memphis, Tennessee; Constance Baker Motley, Thurgood Marshall, 10 Columbus Circle, New York 19, New York, Attorneys for Plaintiffs.

[fol. 10]

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS—Filed July 1, 1960

First Defense

Defendants deny the jurisdiction of this Court to hear this cause. Plaintiffs and defendants are residents and

citizens of Shelby County, Tennessee, and the matters and things involved herein are subject to the prior jurisdiction of the Courts of this State.

Second Defense

Defendants deny the right of the plaintiffs, or those for whom they assume to sue, to a permanent injunction against defendants on the allegations of the complaint.

Third Defense

Defendants deny the right of the plaintiffs to a declaratory judgment against defendants under the law and facts involved herein.

Fourth Defense

Defendants deny that this is a class action and deny the authority or agency of the plaintiffs to institute this suit for anyone except themselves.

Fifth Defense

Defendants deny that the number of libraries, parks, playgrounds, boat docks, lakes and golf courses which may be used by white persons only far out number such facilities that may be used by negro persons only, especially when negro participation is considered.

The public park system of the City of Memphis has been developed, managed and expanded over a period of many years for the purpose of providing the maximum recreational facilities for all the citizens of Memphis, both colored [fol. 11] and white. There are approximately one hundred (100) public parks in the City of Memphis. Said parks are strategically located so as to provide access to the persons living in the neighborhood at or near said parks. In neighborhoods where the population is predominantly Negro, such parks are used exclusively by Negroes. In neighborhoods where the population is predominantly white, the parks are used by white persons. In other than residential areas, the parks are used generally by all the citizens of Memphis.

Therefore, the utilization of the public parks of the City of Memphis has not been capriciously divided as to race, but, on the contrary, admission to said parks by citizens of Memphis has been regulated so as to provide maximum recreational facilities for the maximum number of Memphis citizens in areas where such citizens reside.

With reference to allegations in the complaint concerning park facilities available to Negro citizens in Memphis, it is significant that there are seven (7) public golf courses operated by the Memphis Park Commission, two (2) of which have been and are available exclusively for use by Negroes. In the first eleven (11) months of 1959, 205,406 players used the seven (7) public golf courses, of which number 13,405 used the two courses reserved exclusively for Negroes—thus, although the Negro citizens had available for their use approximately thirty per cent (30%) of the public golf courses in Memphis, Negro golf players comprised only about six and one-half per cent (6½%) of the total golf players.

Another example of park facilities available to Negro citizens is seen in tennis courts.

Several years ago the City of Memphis Park Commission installed modern tennis court facilities for Negroes at [fol. 12] Lincoln Park. These courts are available for both day and night play at no charge, while similar such courts in John Rogers Tennis Center are available for whites at an admission charge of eighty cents (80¢) for night play and forty cents (40¢) for day play.

Other examples of recreational facilities available to Negro citizens can be given to show that defendants are providing maximum recreational facilities for the maximum number of Memphis citizens, both white and Negro.

Sixth Defense

Further pleading, defendants would show that approximately thirty-five percent (35%) of the total population is Negro and approximately sixty-five per cent (65%) of said population is white; that these defendants have the duty of exercising the Police powers vested in such a way as to prevent riots, violence, and disharmony of all kinds among the races; that historically and traditionally, riots

and violence have frequently occurred in areas where races are mixed in large numbers in places of amusement. Therefore, these defendants, in discharging their duties as public officers and in exercising the Police powers vested in them by law, have prevented the assembly of mixed groups in large numbers in some of the parks of the City of Memphis in order to maintain harmony between the races and in order to prevent violence, bloodshed and civil commotion.

Problems that are reasonably likely to flow from forced mixing in the public parks of the City of Memphis are peculiar to the Memphis area by reason of the location of Memphis in the southwestern corner of Tennessee, with its very borders touching both the States of Arkansas and Mississippi.

[fol. 13] Seventh Defense

A substantial part of the revenue used for the operation and maintenance of the public parks of the City of Memphis is derived from concession leases and fees charged in connection with amusement devices. In these parks conflicts are so certain to arise if large numbers of both white and Negro groups should attend that a failure of these defendants to limit attendance to either one group or the other would result in few citizens attending such parks because of the fear of disorders and this in turn would deprive the defendants of the revenues needed for the operation of the Park System and would result in all citizens losing a substantial part of the recreational facilities now available to them.

Eighth Defense

Certain parks in the City of Memphis were acquired by wills or deeds containing restrictions, conditions and limitations affecting the title to said lands which depend on whether or not Negro citizens are admitted to said parks, and if these defendants are directed to admit all citizens to all parks and recreational facilities as sought in the complaint, such action would likely result in loss of title to lands held for park purposes. This Court is without jurisdiction of the necessary parties and subject matter and

these questions should not be adjudicated prior to a final decision by Tennessee Courts. In order to determine with greater particularity the exact nature of the provisions contained in the various deeds, wills or other instruments pertaining to the title to land, there will be involved tremendous time and expense in examining the title to all properties held by the City of Memphis for park purposes.

[fol. 14] Ninth Defense

Further pleading, defendants would show that the incidence of violence, vandalism and disorders among visitors to the parks of the City of Memphis is greatly increased in those parks frequented by Negro citizens of the City of Memphis, and if Negro citizens were admitted to all parks on all occasions the additional Police protection which would be required would make the expense of operating said parks prohibitive, and, therefore, all citizens would lose a substantial portion of the recreational facilities now afforded to them if all citizens were permitted to use all parks at the same time.

Tenth Defense

That by custom, usage and tradition the great majority of all citizens of the City of Memphis prefer that the placement of children and others in recreational areas be carried out on a basis which would avoid stress, relieve tension and violence in order to afford maximum recreational facilities for all the citizens of Memphis.

Therefore, all allegations of the complaint not specifically admitted are denied and defendants pray that this cause be dismissed at the cost of the plaintiffs.

Walter Chandler, John S. Porter, Frank B. Gianotti, Jr., J. Seddon Allen, Thomas R. Prewitt, Attorneys for Defendants.

[fol. 15]

Excerpts From Testimony on Trial

DR. WILLIAM O. SPEIGHT, JR.

The said witness, having been first duly sworn, testified as follows:

Direct examination.

Q. Will you state your full name for the record, please?

A. Dr. William O. Speight, Jr.

Q. Dr. Speight, are you a resident of Memphis, Tennessee?

A. Yes, I am.

Q. How long have you been a resident?

A. Practically all my life, except schooling.

Q. Are you a golf-player?

A. Yes.

Q. What courses have you used in the City?

A. Douglas and Fuller Park.

Q. Have you attempted to play golf in any other courses of the City?

A. I attempted to play at Pine Hill.

Q. What was your experience when you went there?

A. We were refused admission to the clubhouse where we would have to purchase a ticket in order to play.

Q. By whom were you refused admission?

A. The golf pro at the Golf Club. I couldn't give his name.

Q. Did he identify himself to you as being the responsible person in charge of the links there?

A. Yes, he did.

Q. And what reason did he give for not permitting you to play on the links?

A. He didn't give any particular reason. He suggested at the time that we go and attempt to play at Galloway on that particular day.

Q. He would not let you use the links at Pine Hill?

A. No, he wouldn't.

Q. Dr. Speight, where do you live?

A. 1865 South Parkway, East.

[fol. 16] Q. And where is the Pine Hill Golf Course in relation to where you live?

A. It's a little west of me on Mississippi. I don't know the other street, but it's a little southwest of my house, from my house.

Q. Do you frequently have occasion or the opportunity to play golf?

A. I do.

Q. And, being a golfing fan, why would you desire to use Pine Hill as opposed to any of these other courses?

A. It's nearer to my home than the other two.

Cross examination.

Q. Do you usually play at Fuller Golf Course?

A. Usually.

Q. How often have you played there?

A. Usually twice a week.

Q. And what about Douglas Park?

A. I did play at Douglas prior to the development of Fuller.

Q. How far do you live from Fuller Golf Course?

A. Between ten and fifteen miles, approximately.

Q. How far do you live from Pine Hill?

A. Less than two.

Q. Have you played in golf courses in any other city besides Memphis?

A. Oh, yes.

Q. How does Fuller Golf Course compare to other golf courses you have played on?

A. Well, actually, I would say it is inferior to some that I have played on, because it is relatively new, and as a result, the fairways haven't been developed as well as they have been in other places.

Q. As a matter of fact, it's developing into one of the finest golf courses in the country, isn't it?

A. I would think so.

[fol. 17] Q. And in a couple of years when nature has had its chance to develop, that will be one of the finest golf courses in the country, won't it?

A. That's a possibility.

Q. The way they are developing it now?

A. Yes.

Q. You can't build a golf course overnight, can you?

A. Not likely.

Q. And you have never been refused the right to play golf at Fuller Golf Course? Whenever you have wanted to play golf in the City of Memphis, you have been able to play, haven't you?

A. Except on one occasion.

Q. What occasion?

A. When I attempted to play at Pine Hill.

Q. Did you play at Fuller then?

A. I didn't play that day.

Q. You could have played, could you?

A. Yes.

Q. You never have been denied the right to play golf in the City of Memphis, have you?

A. No, I haven't.

Q. Your objection is that you were denied the right to play at Pine Hill on one particular day?

A. That's right.

Q. Doctor, would it satisfy you if that golf course were opened to both races on January 1st of next year?

A. No. I would rather see it open as soon as possible, during the time that most would have an opportunity to play. It's very unlikely that too many will go out during the cold weather.

Q. Do you know of any negro who has wanted to play golf in Memphis who has ever been denied the right to play golf?

A. Yes, sir, I do.

Q. Since Fuller Golf Course opened? I will limit it to that. In the last three or four years?

A. There were three others that accompanied me at the time we went to play at Pine Hill; so, therefore, that would make four.

[fol. 18] Q. I am not talking about playing at Pine Hill. I am talking about playing golf.

A. No. I don't know of anyone.

Q. So far as you know, there has been no negro citizen of Memphis in the last three or four years that has ever been denied the right to play golf?

A. That's correct.

Redirect examination.

Q. One further question.

Dr. Speight, can you state that you have not been denied the right to play golf in the City of Memphis in a course of your choice?

A. I can't state that.

Q. You have been denied the right to play golf in the City of Memphis at a public course of your choice?

A. I have.

DR. A. E. HORNE

The next witness, having first been duly sworn, testified as follows:

Direct examination.

Q. Doctor Horne how long have you been a resident of the City of Memphis?

A. Most of my life except while I was out going to school, principally thirty-seven years.

Q. Where do you live?

A. 1974 South Parkway East.

Q. Are you married?

A. Yes.

Q. Do you have any children?

A. Yes.

Q. Do you have any hobbies?

A. My main hobby is playing golf.

Q. Have you ever attempted to use any of the public [fol. 19] courses in the City of Memphis to play golf?

A. Yes, I have.

Q. Have you ever been denied the right to use any of these?

A. I was denied the right to use the Pine Hill Golf Course last year.

Q. You and Dr. Speight went there together?

A. Yes.

Q. You heard his testimony. Is there anything you can add about that particular course?

A. Well, I asked the man who was apparently the manager or golf pro or the man that refused to sell us the ticket to play why they would not sell us one and he said that we couldn't play, that it was a city park and he said it was just the rule of the Park Commission that we couldn't play.

Q. For that reason he refused to let you or Dr. Speight use that golf course?

A. Yes.

Q. Are you familiar with the fact that there are other recreational facilities provided by the City of Memphis?

A. Yes, I am.

Q. And having children, all the other recreational facilities, I suppose you would like to use them or for your children to be able to use them?

A. As far as possible, yes.

Q. What are the closest parks to where you live as far as facilities operated by the Park Commission?

A. The very closest playground type park would be Glenview, I believe.

Q. Have you tried to take your children there to play?

A. No, I haven't.

Q. Do you know whether that park is operated on the basis that it is available to all citizens in the city?

A. According to the testimony I heard this afternoon it is for white.

[fol. 20] Q. Do you feel this is a policy of the Park Commission you approve of?

A. I do not approve of it.

Q. Dr. Horne, from where you live about how far is it to the golf course at Fuller Park?

A. About twelve to fifteen miles.

Q. From where you live about how far is it to the golf course at Douglas Park?

A. Roughly eight miles.

Q. Are there any golf courses closer to you?

A. The closest golf course to me is Pine Hill.

Atty. Sugarmon: That is all.
Mr. Prewitt: I have no questions.

CURTIS KING, JR.

The next witness, having first been duly sworn, testified as follows:

Direct examination.

Q. Will you state your full name to the Court?
A. Curtis King, Jr.
Q. You are a resident and citizen of Memphis?
A. Yes, sir.
Q. Have you ever had occasion to go to what is known as the Pink Palace?
A. One occasion.
Q. When was that?
A. That was last year.
Q. What day of the week was it?
A. It was on Thursday.
Q. What was your experience?
A. I went to the Palace to look up some references and when we got there we was refused at the door by one of the employees.
[fol. 21] Q. Did he say why you couldn't use the facilities out there?
A. They said the reason we couldn't enter was because negroes couldn't go there but on no other day but Tuesday.

Attorney Sugarmon: No further questions.
Mr. Prewitt: No questions.
Attorney Sugarmon: Thank you.

MELVIN ROBERTSON

The next witness, having first been duly sworn, testified as follows:

Direct examination.

Q. Will you state your full name?
A. Melvin Robertson.

Q. Mr. Robertson, you are a resident and citizen of this city and this county?

A. Yes.

Q. Have you ever had occasion to go to the Fairground?

A. Yes, I—

Q. What date was that and tell the Court what happened?

A. Well, I think it was the second Sunday in May. I went out there and entered the gate and walked around the premises and when I went up to buy a ticket I was told I couldn't buy a ticket by the woman there. I asked her why I couldn't and she said she had orders not to sell negroes tickets and I asked her why and she said I would have to see the manager, Mr. Smith.

Mr. Prewitt: What is the date of this?

The Witness: That was in the month of May.

Mr. Prewitt: What year?

[fol. 22] The Witness: 1961.

Q. Will you continue?

A. She said that I would have to see Mr. Smith and I asked her if it was customary that everybody that buy a ticket see Mr. Smith and she said that it wasn't but she had orders, and that there was one day a week for negroes starting the first of June. Mr. Smith came up and introduced himself and indicated that starting in the month of June negroes would have one day which would be on Tuesday.

He said he would like for us to leave peaceful and orderly and if not he would have to summon the police. He asked me would I leave and I replied that I would not.

He called the police and the police came and they said we would have to leave the park. I asked them why and they said the park was operated on a segregated basis and they were instructed to enforce the law. They asked would I leave and I told them I would not.

At that time he told me the Captain would be there shortly and he came and asked would we leave and I asked him why I should and he said that the park was operated on a segregated basis and we only had one day a week starting with the month of June. He asked would I leave and

I told him no and he left and made a call and came back and we waited about forty-five minutes and he came back and asked again would I leave and I told him that we work on Tuesday and it was impossible for us to attend the Fairground on Tuesday.

He then told us we was all under arrest and they arrested us.

Attorney Sugarmon: No further questions.
Mr. Prewitt: No questions.

[fol. 23] JOSEPH WILLIE LANE, JR.

The said witness, having first been duly sworn, testified as follows:

Direct examination:

Q. Will you state your full name?
A. Joseph Willie Lane, Jr.
Q. Are you a citizen of Memphis?
A. I am.
Q. Do you have any children?
A. I have three.
Q. Do you have occasion to attend any of the recreational facilities afforded by the Park Commission of the City of Memphis, or did you recently?
A. I have.
Q. Will you state when, where and what happened?
A. On last Saturday, June 10th, I attempted to fish in the rodeo at Riverside Park.
Q. What is the rodeo?
A. It is the rodeo that the Commercial Appeal has been sponsoring for all children between the ages of six and twelve can participate.

My kids love to fish and I clipped out the clippings and sent two of them in and on the first of June I received two cards stating numbers 895 and 896 on the cards, and that numbers 601 to 1000 was supposed to fish on June 10th, which was last Saturday, between the hours of 9:00 A.M. and 11:30 A.M. and stated on the card you was supposed

to watch the Sunday morning paper June 4th for dates on it.

It stated in the paper to get to the park about a half hour before fishing time.

Q. What park was that?

A. Riverside Park.

My little boy was anxious to fish and he got up about five o'clock and we got to the park about seven-thirty.

[fol. 24] I pulled up in my car and got the poles and bait and lunch and a canteen of water out and the children was walking around the park, white children and my two, and I was waiting up under the tree waiting until they got ready to sign up.

About eight o'clock they attempted to start signing the children up as many was gathering around.

About the time my little boy appeared in front of the lady she stated that it was too early, that they was only supposed to start registering at eight-thirty.

Q. What sort of a card was this?

A. A little three-cent post card.

Mr. Gianotti: If Your Honor please, may I ask an explanatory question.

There is some allegation that—is there an allegation that the Park Commission exercised control over this fishing rodeo, or was that sponsored by a private organization?

Attorney Sugarmon: If Your Honor please, it was sponsored by the Commercial Appeal, using facilities own and operated by the Park Commission, and this suit is seeking an injunction against segregation and we think the law will sustain us that if any publicly owned facility is leased they must be under the conditions that will protect the rights of all citizens.

This was used by a private organization under terms that restricted the rights of this man and his children.

Mr. Gianotti: Your Honor, I think we are all familiar with these cases. If he has reference to the Louisville case I don't think that goes so far as this. There is nothing alleged in this complaint to the point where counsel could [fol. 25] have in any way been advised that this type of

incident should be alleged, and we move that the testimony be stricken and we object to all the testimony.

As I understand, perhaps we can take an example. You have fifteen or twenty people going out for a picnic and pretty soon you couldn't have your own crowd in any park, negro or white.

I think these rights work both ways.

The Court: Let's see what the facts are.

Are you saying that the Park Commission was responsible for what happened there on this day or the newspaper. What are your contentions?

Attorney Sugarmon: It is my understanding, from the testimony so far, that this witness' presence in that park was in response to a published invitation run in the paper by the sponsors inviting public attendance, and didn't specify negro or white.

The Court: Who was conducting this fishing deal down there, the paper or the city?

Attorney Sugarmon: The Commercial Appeal, I believe.

The Court: Let's get the facts. There is no jury here to be prejudiced.

Q. Was it the Commercial Appeal?

A. I guess it was, I got it out of that paper.

Attorney Sugarmon: Did I understand Your Honor to say go on?

The Court: Yes, you may develop the facts.

[fol. 26] Q. Go on?

A. At the time my little boy and girl was standing there to be registered this lady said it was too early, it was about eight o'clock, she said to come back at eight-thirty.

They had started registering at eight o'clock and my little boy and girl—they had registered about eight or ten before them.

This lady walked over and spoke to Mr. Reynolds, I think he is Outdoor Editor for the Commercial Appeal, and he came over there and spoke to me and told me that this fishing rodeo was only for white children.

I told him I didn't notice any there but white and mine, my two, and he told me he didn't want to create any trouble

and they would give them any prizes on the table if we left quietly.

I told him that this clipping was in the paper and it didn't say white or colored, and I said that my children were set to fish.

Mr. Gianotti: If Your Honor please, I understand the Court's ruling, but it would appear from this statement we are going so far afield—some conversation with Mr. "X", that the City has—that the City is not connected with in any way.

If you want to just let the witness go ahead and talk, it may be all right. But certainly we are interested in orderly procedure. We can see no ground on which this is competent.

The Court: Well, do you agree that this is beyond the issues in this particular case? The Commercial Appeal had this—a local newspaper—

Attorney Sugarmon: If the Court please,—

[fol. 27] The Court: (Continuing) —Had a party down there. And it does seem a man by the name of Rembert—

The Witness: Reynolds.

Attorney Sugarmon: If the Court please,—

The Court: Was he working—

The Witness: His name was on the card.

Attorney Sugarmon: If the Court please, there is a—I think a very clear line of authority dealing with the leasing or use of public owned facilities by private organizations. And I think that these cases spell out a responsibility on the part of the Park Commission to lease these facilities under such terms as the enjoyment of the facilities leased will be in a constitutional fashion. And we are using this an example—

The Court: Well, Mr. Gianotti for the defendants is protesting here that this is beyond the issues, that he had no notice of it and is not prepared to meet this issue. And on the statements so far of this witness, this was something over which defendants had no control at all and had no part in.

Attorney Sugarmon: If the Court please, we feel that the reach of our petition in that we ask an injunction to issue to the Park Commission to order them to stop their

policy of operating the park system of the City of Memphis on a segregated basis and stop enforcing a policy of segregation in their operation of the parks embraces incidents of this type.

[fol. 28] The Court: Well, the Court will sustain the objection to this phase of it. I don't believe that is within the issues.

Attorney Sugarmon: We would like to note our exception.

The Court: All right.

Attorney Sugarmon: We have no further questions.

DR. I. A. WATSON, JR.

The next witness, having been first duly sworn, testified as follows:

Direct examination:

Q. State your name to the Court, please.

A. I. A. Watson, Jr.

Q. And I believe you are one of the plaintiffs in this lawsuit, is that correct?

A. Yes, I am.

Q. I ask you to state to the Court whether or not you had occasion to be with Dr. Horne and Dr. Speight at the Pine Hills Golf Club?

A. Yes.

Q. Will you state to the Court what happened on that day?

A. As mentioned before, we attempted to purchase a ticket at Pine Hills Golf Course, and we weren't admitted to the club house. The one in charge, I believe the pro, stood in front of the door and would not let us in. And we asked if we could purchase the tickets to play and if we weren't entering the golf course—entering the club house. And of course he mentioned to us that, "You fellows know what you are doing, and I know what you are doing. Why [fol. 29] don't you try Galloway course or try somebody else. Just don't try me. I know exactly what you are trying to do."

Q. Will you state to the Court where you live?

A. I live at 1379 Melrose Cove.

Q. About how far is this address from Pine Hills Golf Course?

A. I would say I could reach Pine Hills in about five minutes time, I believe. I would say it would be about two or three—about two miles.

Q. Well, is it closer to you than the course that has been mentioned, at Fuller Park?

A. Fuller Park from me would be about twelve miles.

Q. Now, how long have you lived in Memphis?

A. I have lived in Memphis all my life.

Q. And have you attempted to use any other public facilities in the City of Memphis?

A. Yes, I believe in '56 we had the Sam Quarles golf tournament at Audubon Park. The crippled pro there I believe was a friend of the one that was visiting me from Springfield, Illinois. And of course, after the tournament we went back out to the park to see this pro. And of course, they have a little practice tee there. And in waiting around while they talked, I accompanied him because he wasn't familiar with the city, and of course I was asked even off of this little golf putting tee that they have there.

Q. Is that on the park?

A. Audubon Park.

Q. Have you attempted to use any other facilities—public facilities in the City of Memphis, Dr. Watson?

A. I haven't attempted to use any other facilities. I believe that my reason for filing this suit is because I want to be able to use all the facilities in the City of Memphis. I [fol. 30] am a home owner. I am a taxpayer. And I believe that all the facilities that are open to anyone else should be open to me.

Q. And on this occasion that you mentioned at Audubon Park, that was open specially to negroes—

A. That was—

Q. (Continuing) —For a few days for the tournament, is that correct?

A. That is right.

Q. And later on when you all went back you were denied the right to use it?

A. I was denied the right to even go on the putting ground.

ALMA BONDS

The next witness, having been first duly sworn, testified as follows:

Direct examination.

Q. State your name. Your name is Alma Bonds?
A. Yes, sir.
Q. And do you live in Memphis, Shelby County, Tennessee?
A. I do.
Q. Where do you work?
A. Collins Chapel Hospital.
Q. How long have you lived in Memphis?
A. Ever since I was eleven years old.
Q. And do you have children?
A. I do.
Q. Will you state to the Court whether or not you have had occasion to try to—to use, rather, a public facility in the City of Memphis?
A. Yes, I have. On June 4th I entered Gaston Park with about twenty-eight children. We were there about an hour and was chased off by the police. They didn't say too much to us but they did chase the children.
Q. Now, before the police came, had these twenty-eight [fol. 31] children you are referring to—I imagine they were negro children, weren't they?
A. Yes, they were.
Q. And they had been on the Gaston Community Park grounds for about an hour before the police came?
A. Yes.
Q. Was there any disturbance of any kind or character before the police came?
A. No disturbance.
Q. Well, have you had occasion to use any other—try to use any other public facility in the City of Memphis?
A. Well, no, because I didn't want to be chased by the police, so I decided I would ask—wait until I come into—
Q. And do you expect to use other public facilities until this is over?
A. I do not.

Q. How many children do you have?
A. I have six—eight.
Q. Eight?
A. Eight.
Q. On the day you were at Gaston Community Park, where—or were those your own children there?
A. Yes.
Q. How many?
A. Eight.
Q. Where do you live?
A. 272 Alston.
Q. How far is that from or how close is that to Gaston?
A. About three blocks.
Q. Well, now, you have heard the testimony they have certain parks for negroes here in Memphis and certain parks for whites. Do you happen to know the nearest park that has been designated by the Park Commission a negro park from where you live?
A. The closest one I can recall is Lincoln's Park.
Q. And about how far is that from where you live, do you know?
A. It is about five miles.
Q. And Gaston Community Park is only about three [fol. 32] blocks, is only about three blocks from where you live?
A. Yes.

Attorney Hooks: I believe that is all.
Mr. Prewitt: No questions.

HAROLD GHOLSTON

The next witness, having been first duly sworn, testified as follows:

Direct examination.

Q. Will you give your name, sir?
A. Harold Gholston.
Q. Are you a resident here in Memphis and Shelby County?
A. I am.

Q. I will ask you whether or not you had occasion to go to John Rogers Tennis Court in recent weeks?

A. It was sometime during May of last year.

Q. Will you tell us what happened on that occasion?

A. When we got there we asked could we go in. There was a negro employee there told us we couldn't enter. I asked him why. He said because it was only for white.

Q. Do you know where this place is located?

A. Yes, I do.

Q. Where?

A. It is on the corner of Jefferson and Waldran.

Q. Where do you live?

A. I live in the Hyde Park vicinity.

Q. Is that close to there?

A. No. Well, John Rogers center—it is about five miles from where I live.

Mr. Prewitt: About how far?

A. Five miles.

[fol. 33] Q. You do like to play tennis, though, is that correct?

A. Yes, I do.

Q. Pardon me. Are you in favor of all facilities in Memphis of being desegregated?

A. Yes, sir.

Q. So as to permit you to go any place you desire and take part in it?

A. Yes, sir.

Cross examination.

Q. Where did you say you live?

A. Hyde Park.

Q. Where is that?

A. I didn't understand.

Q. Where is that?

A. Out by Springdale.

Q. Is that in south or north Memphis?

A. North Memphis.

Q. And I believe you said that is about five miles from the John Rodgers Tennis Courts?

A. That's right.

Q. Do you know where Gooch Park is?

A. It wasn't there at the time.

Q. It is open now?

A. It is open.

Q. They have tennis courts there?

A. Yes.

Q. As a matter of fact they are putting some new lights there?

A. I imagine they are.

Q. What is that surface there. It is a Rubyco surface?

A. It is more like sand.

Q. Are you familiar with Rubyco courts?

A. Not too familiar.

Q. How long have you been playing tennis?

A. All the chances I can get.

Q. Have you ever played on the new courts at Gooch Park?

A. Yes, I have.

Q. These Rubyco courts are the finest you can build, aren't they?

A. I wouldn't know about that.

[fol. 34] Q. And they are free, too, aren't they?

A. Yes, they are.

Q. The John Rogers courts, they charge an admission for those?

A. I wouldn't know, I didn't have a chance to get in to find out.

Q. You do know that the Gooch Park courts are free?

A. Yes.

Q. And you are playing there about twice a week, I believe you said?

A. Somewhere like that.

Q. Is there a tennis court in Memphis that is closer to you than Gooch Park?

A. No, there is not.

Q. Have you ever been denied the right to play at the Gooch Park courts?

A. No, I haven't.
Q. For free?
A. For free.

Redirect examination.

Q. Do you belong to any tennis club?
A. I belong to the tennis association.

ALFRED HAYNES, JR.

The next witness, having first been duly sworn, testified as follows:

Direct examination.

Q. Would you give us your full name?
A. Alfred Haynes, Jr.
Q. You are a resident of Memphis and Shelby County?
A. Yes, sir.
[fol. 35] Q. I will ask you if you had occasion to go to John Rogers Tennis Court in recent weeks?
A. Yes, I have.
Q. What occasion did you have to go there?
A. When we went there an employee said it was for white and we couldn't play there, that it was for white, so we left.
Q. Do you belong to any tennis club?
A. Yes.
Q. Do you like to play tennis?
A. I like to.
Q. Do you feel, as a citizen, that you have a right to go to any one that is open to the public?
A. Yes, I do.

Cross examination.

Q. Where do you live?
A. Hyde Park.
Q. Is that in the same area that the witness Harold Gholston lives?
A. That's right.

Q. I take it that you, like him, the closest tennis court to you is at Gooch Park?

A. Yes, that's right.

Q. How long have you been playing tennis?

A. About six or seven months.

Q. Well, I notice you didn't go to the John Rogers Tennis Court—or rather you went there on April 27, 1960?

A. I was beginning to learn the game then.

Q. That has been about twelve or fourteen months then?

A. Yes, sir.

Q. Do you play at the Gooch Park courts?

A. Yes, I play now.

Q. They have these Rubyco courts there haven't they?

A. That's right.

Q. They are the finest courts you can build aren't they?

A. It is nice.

Q. Have you ever been denied the right to play there?

A. No, sir, I haven't.

[fol. 36] Q. Have you ever had the notion to play tennis and not had the opportunity to play at Gooch Park?

A. No, sir.

Q. They are putting new lights up there now so you can play at night?

A. Yes.

Q. There is no charge?

A. That's right.

Q. Are you familiar with the fact that if you play at John Rogers tennis courts there is an admission charge to play there?

A. We didn't get a chance to go.

Q. Had you rather go five miles to play and pay forty cents to play than to play free close to home?

A. Gooch wasn't there then.

Q. I am talking about the facilities there now.

Are you telling this court now that you had rather go five miles and pay forty cents to play than to go five blocks and play for free?

A. It is nice if I go five blocks and play free, but Gooch wasn't there when we went there.

Q. I am talking about right now, Alfred, what is your position right now?

A. I would rather go to Gooch and play.

Q. I didn't catch that, you had rather go to Gooch and play?

A. Right.

[fol. 37] HARRY PIEROTTI

The said witness, having first been duly sworn, testified as follows:

Direct examination.

Mr. Prewitt: You have already been sworn.

The Court: Yes, he was sworn previously.

Q. You are Harry Pierotti, Chairman of the Park Commission, and you have already been sworn in this case?

A. Yes.

Q. How long have you been a member of the Memphis Park Commission?

A. I have been a member of the Memphis Park Commission since April 1947.

Q. And how many members comprise the Memphis Park Commission?

A. There are five members of the Commission.

Q. How long have you been Chairman of the Memphis Park Commission?

A. Since January 1, 1956.

Q. And the Memphis Park Commission is charged with the responsibility or obligation of running the Memphis park system?

A. That is correct.

Q. The active management of the system, of course, is delegated to Mr. Lewis and other employees?

A. That is correct.

Q. Mr. H. S. Lewis is the operating head of the Memphis park system?

A. That is correct.

Q. How often does the Memphis Park Commission meet?

[fol. 38] A. We have stated meetings once a month and if matters come up we call special meetings, which we often

do, to make decisions on certain matters that come up between the stated meetings.

Q. Now there has already been introduced in evidence a list of the various facilities the Park Commission is connected with and I am not going into those on an individual basis, but I just want to direct your attention to the Pink Palace Museum?

A. Yes, sir.

Q. Now are you familiar with the deed under which the City of Memphis acquired the Pink Palace Museum?

A. I am.

Q. Now is that owned by the City of Memphis?

A. It is.

Q. As a matter of fact all the parks are owned by the City of Memphis but operated by the Park Commission?

A. That is correct. The Park Commission holds title to no real estate.

Q. I believe you have in your hand a report which pertains to the title to the Pink Palace property, is that correct?

A. That is correct.

Q. Who prepared that?

A. Mr. J. Seddon Allen. I would rather refer to it as a report and brief. Mr. Allen, at that time, was attorney for the Memphis Park Commission.

Q. What precipitated the report and brief of Mr. Allen?

A. I believe Mr. Allen's report is dated February 5, 1959.

What gave rise to the report was that in the latter part of 1958 Mr. Everett Woods, local architect and Chairman of the Museum in the Pink Palace, conferred with me and he in substance stated to me that the museum was in bad [fol. 39] physical condition and something should be done with reference to building a new museum.

I invited Mr. Woods to come to the next Park Commission meeting which was January 6, 1959 and to present his views.

This is a matter of public record, and Mr. Woods did come and he advocated at that time that we appropriate a rather sizeable amount of funds to erect a new museum.

We, of course, advised Mr. Woods that we did not have the funds with which to do anything like that and that we were certain the city would not give us those funds.

He presented a letter in which he proposed that we sell the property where the museum is located, and the surrounding acreage, since it would be perfect for a subdivision, and with that money we could erect a new museum.

Mr. Allen was present at that meeting, as he was most of the time, just as you are now, and I asked Mr. Allen to give me an opinion as to whether or not it was possible for the city to sell this property, because I had no certain limitations of the property to the City. Mr. Allen, in compliance with my request, at the next meeting of the Park Commission, sometime in February, 1959, reported to us and gave to me this Report and Summary of Titles to the Pink Palace, which is the museum property, and the surrounding property held by the City for the museum and park purposes. In this report, which I will be very happy to make as an exhibit to my testimony, Mr. Allen traces the origin of the title in the City and sets out, not only the description, but the conditions and limitations incident to the title.

Q. Mr. Pierotti, before you go any further, did Mr. [fol. 40] Everett Woods, who I believe was chairman of the Advisory Board, Memphis Museum Committee—he wrote a letter to the Park Commission, didn't he?

A. Yes, he did, and I have a photostatic copy of that letter, which I believe is dated January 6, 1959.

Q. I have supplied counsel for the plaintiffs with a copy of this letter, and I would like for you to make a photostat that you have in your hand Exhibit 1 to your testimony.

A. I will be glad to do it.

Q. Mr. Pierotti, without reading the whole letter, was the purport of the letter or the substance of the letter request on behalf of this committee that the museum property be sold?

A. That's correct.

Q. And re-invested in another building?

A. That is correct.

Q. And, in response to that request by this Advisory

Board, you asked Mr. Seddon Allen, Mr. J. S. Allen, to give you an opinion?

A. I did.

Q. As to whether or not the City or the Park Commission could, in view of the title, convey this property?

A. That is correct.

Q. And do you have that opinion and report in your hand now?

A. I do have it.

Q. I will ask you to make that report and brochure Exhibit 2 to your testimony, and I have a full report, which I will just hand to the reporter and ask that it be marked, and I have supplied a copy of this to plaintiffs' counsel.

A. All right.

Q. Mr. Pierotti, at the time Mr. Seddon Allen was asked to give this report, was there any question raised with [fol. 41] regard to the conditions in the deed of gift regarding race?

A. No, there was not.

Q. Now, this opinion has to do solely with another matter, that is whether or not you could convey the property?

A. That is correct.

Q. And use it for purposes other than public park purposes?

A. That's correct.

Q. Now, does Exhibit 2 reflect Mr. Allen's opinion with regard to whether or not the City could convey this property on which the Pink Palace Museum is located?

A. It does.

Q. And what was Mr. Allen's opinion?

A. To summarize just briefly—rather to summarize his report, he wasn't positive or wasn't sure at all just what we could do with this property and so advised both—I know the Park Commission, and possibly the City Commission to that effect—that there were certain conditions and limitations in the deed of conveyance that if they were breached that there could possibly be a forfeiture to the original grantor or his heirs.

Q. Now, this Exhibit No. 2 to your testimony contains a photocopy of the deed under which the City of Memphis acquired the museum property, does it not?

A. It does.

Q. And that's of record in Book 1092, page 112, of the Register's office of this County?

A. That's correct; and it was recorded on the 2nd day of August, 1926.

Q. Now, Mr. Pierotti, this deed has provisions C and D in it, does it not?

A. It does.

Q. As I stated, this deed is already a part of Exhibit 2, is it not?

A. That's correct.

Q. And I will just read a portion and ask you if this is [fol. 42] a portion of the deed which relates to the question we have now under consideration.

C—Said building and grounds shall be devoted wholly and exclusively to public uses for the benefit of persons of the Caucasian race only and as a conservatory, art gallery, museum of art or natural history, and so forth.

And I will ask you if Section D does not say this:

In the event of a breach of either or any of the foregoing covenants or conditions in any substantial particular and such breaches shall continue for a period of—I believe it is thirty days?

A. Ninety days.

Q. Ninety days after written notice to Memphis Park Commission or to the Commission—I can't read the next word.

A. And Mayor or chief officer.

I think, perhaps, Mr. Prewitt, I could read it a little better. This seems to be clearer on my copy.

Q. Mine is a photostat. Maybe you had better pick it up.

A. "In event of breach of either or any of the foregoing covenants or conditions continuing for ninety days after written notice to Park Commission and City, Park Commission and Mayor or Chief Officer for which forfeiture sought, then the foregoing dedication or conveyance shall be and become void at option of First Party or its assigns, and if breach not remedied within ninety days, Party of the First Part, or its assigns may re-enter and hold same as of former estate, with all additions and betterments, and

so forth, provided forfeiture not permitted if such breach [fol. 43] is wholly discontinued or remedied within such period of ninety days."

I think that's the pertinent part of the restrictions.

Q. All right. So, Mr. Pierotti, with that provision in that deed—and you are a lawyer, are you not, sir?

A. Yes, sir.

Q. I might say a very good one.

A. I have a license to practice, let's put it that way.

Q. With that provision in that deed and no adjudications by the Courts of Tennessee as to the effect of opening up Pink Palace to negroes every day in the week, in your opinion, would that be safe, a safe course to pursue without any adjudication by the Courts of Tennessee as to the effect of those provisions?

A. I do not think it would be a safe course to pursue, based on what my own opinion about it is, and, of course, Mr. Allen's opinion to me as Chairman of the Park Commission.

Q. And you recognize that on matters of title, jurisdiction is vested in the Chancery Courts of the State of Tennessee?

A. That's correct.

The Court: There is that clause in the deed. Would not there be other necessary parties to this phase of it? I have in mind the reversioners, if that is a right word. Would they not have an interest here, a right to concur in this proceeding? That just occurs to me.

Mr. Prewitt: If Your Honor please, if not in this proceeding, then in a proceeding in the Chancery Court, which would have jurisdiction to determine the effect of this provision. Certainly they would have a right to be heard. Of course, our position is that this deed provides for right [fol. 44] of re-entry on the part of the original grantor or his assigns, and a possibility of a reverter on re-entry. We think there should be some adjudication by the Chancery Court of Shelby County before anything is done about that.

The Court: Well, I didn't mean to interrupt. That just occurred to me, that maybe that was something to consider, but you were about to ask a question, I believe.

By Mr. Prewitt:

Q. Now, Mr. Pierotti, Mr. Lewis has already introduced in evidence a list of parks, developed and undeveloped, and I believe there were some one hundred thirty-one.

Q. One hundred thirty-one is right.

Now, Mr. Pierotti, as Chairman of the Park Commission, are you familiar with the deeds under which these hundred and thirty-one parks were acquired?

A. I am not.

Q. In order to acquaint yourself with the provisions in the deeds, under which these one hundred and thirty-one parks were acquired, would you have to get an abstract on each one?

A. That's correct.

Q. And is that information available to any person?

A. It is.

Q. And, of course, to get an abstract, it requires considerable expenditure of money?

A. Yes, it does.

Q. And if you went to check the title to a hundred and thirty-one separate parcels, of course you would have to have at least a hundred and thirty-one abstracts?

A. That's correct, sir.

[fol. 45] Q. And you are not prepared to say whether parks which are not specifically mentioned in this lawsuit have any such provisions as the Pink Palace deed?

A. I cannot say, Mr. Prewitt. When we acquire property, of course it is examined by title guaranty companies, and they only tell us at the end of the period of time that we owe so much money for any park that we acquire.

Q. Are many of the parks out of this hundred and thirty-one acquired by gift?

A. Yes, they are.

Q. By people who desire to make gifts of land for public use?

A. That's correct.

Q. And, of course, in making a gift of land for public purposes, a grantor is free to put whatever restrictions or conditions he desires?

A. We will accept them. Of course, he can make any condition that he wishes to make in the deed of gift.

The Court: Are you telling us that you think there are restrictions in the deed in respect to some of these other parks?

A. Yes, that's true. I can recall one just offhand, since I see Captain Chandler there—the Gooch property had certain restrictions and limitations. That property was acquired in the last two or three years. What they are, I do not know, but I do know there are certain conditions and limitations in that grant.

By Mr. Prewitt:

Q. That would be for negro use?
A. That's correct.
Q. Mr. Gooch, of course, was a white benefactor?
A. That's true.
[fol. 46] Q. Now, Mr. Pierotti, with reference to the Pink Palace Museum, is this your position that this Court should abstain with reference to any ruling on that until the proper courts have had a chance to determine whether or not the City would lose that property if the relief here pleaded for were granted?
A. That's correct.
Q. You have heard the testimony of Mr. Lewis that at the present time the Memphis Park System has fifty-eight white parks and twenty-five colored parks and twenty-five parks that are integrated or general?
A. That's correct.
Q. Now, are you familiar or will state to the Court whether or not in recent years the Park Commission has had a policy of opening up parks from time to time for use by all citizens?
A. That's true.
Q. Now, how many zoos are there in Memphis?
A. There is one.
Q. Is that open to all citizens?
A. It is.
Q. Operated by the Park Commission?

A. That's correct.

Q. And was that formerly operated on a segregated basis?

A. It was.

Q. Prior to the latter part of 1960 I believe?

A. I would say within the last six or eight months, yes, sir.

Q. How many art galleries do you operate?

A. There is only one.

Q. Now, is that open to all citizens?

A. It is.

Q. And was it formerly operated on a segregated basis?

A. It was.

Q. And I believe in March of this year it was opened to all citizens?

A. Some time back it was, yes.

[fol. 47] Q. Now, there is a lake known as McKellar Lake in Memphis, isn't there?

A. Yes.

Q. And the Park Commission operates a Boat Dock there?

A. Yes, sir.

Q. Is that the only Boat Dock that the Park Commission operates?

A. That's true.

Q. Is that open to all citizens regardless of race?

A. It is.

Q. And has that been done recently?

A. Yes, sir.

Q. Is that a part of the Park Commission's plan, gradual plan to offer such facilities to members of both races?

A. It is.

Q. Now, what about your plan for the future, Mr. Pierotti? Does the Park Commission plan to open up other facilities in the future? Have you evolved any plan with regard to that?

A. Mr. Prewitt, I think I can better express that if I would read the plan which we have evolved, so there won't be any mistake about what our plan is for the immediate future.

Q. All right, sir. Suppose you read that plan.
A. (Reading)

"Having heretofore, before the filing of this suit, provided twenty-one parks in the City on a non-segregated basis, and having recently removed restrictions at Overton Park Zoo, Art Gallery in Overton Park and the Boat Dock at McKellar Lake, the Park Commission, following a practice already adopted, has evolved the following plan and the following facilities will be open to all races without restrictions at the dates indicated.

"1: The Fairgrounds Amusement Park at the conclusion of the present year.

[fol. 48] "2: Pine Hill Golf Course will be done January 1st, 1962.

"Fuller Golf Course, February the 1st, 1962.

"Riverside Golf Course, March 1st, 1962.

"Audubon Golf Course, January 1st, 1963.

"Douglas Golf Course, February 1st, 1963.

"Overton Park Golf Course, March 1st, 1963, and the Galloway Golf Course, January the 1st, 1964."

The Park Commission proposes to follow the foregoing schedule.

This program, which is in line with the practices already developed and evolved by the Park Commission, may be accelerated, subject to many matters which the responsible officials of the Park Commission may consider from time to time. These include diverse conditions, such as maintenance of law and order, avoidance of confusion and turmoil in the community, efforts to provide maximum use of park facilities for all citizens regardless of race, revenue available from park concessions, together with a proper recognition of the legal rights of all citizens, white and negro, under state and Federal law.

This program of the Park Commission is not one based on any denial of any constitutional rights which either the negroes or whites may have, but so designed to provide maximum recreational facilities for the maximum number of Memphis citizens in the area where such citizens reside.

This is our policy and our plan for the immediate future, Mr. Prewitt.

Q. And is that what you expect to follow?

A. It is.

[fol. 49] Q. Mr. Pierotti, have you lived in Memphis all your life?

A. Yes, I have.

Q. If the Park Commission is not permitted discretion and leeway in determining the method and manner of removing racial restrictions on public parks, do you feel that there will be turmoil and confusion in the community?

A. I do, and I think probably bloodshed too, Mr. Prewitt.

Q. Is this the desire of the Park Commission to deny rights, any constitutional rights, to any negro citizen of Memphis?

A. There is not.

Q. Now, after the Fairgrounds is opened, if this plan is approved by the Court at the conclusion of this year and with reference to the Fairgrounds, may I digress just a minute—

Does the Park Commission enter into contract with private individuals for operation of concessions at the Fairgrounds?

A. They do.

Q. Do you feel that it would be unfair to those people with whom you have contracted to change something in the middle of a year?

A. Well, we think it would be.

Q. Are you mindful of the legal rights of those people?

A. Yes, we are.

Q. Are you mindful of the fact that they are dependent upon revenue which they obtain from those concessions for their livelihood?

A. I am.

Q. So, does your plan take cognizance of the legal rights of white people as well as negroes?

A. Both races.

Q. And you plan to open up the Fairgrounds at the end of this year?

A. Yes, sir.

Q. Now, you have opened up the Zoo. That's a City-wide facility, isn't it?

A. It is.

[fol. 50] Q. The art gallery; that's a City-wide facility?

A. It is.

Q. The McKellar Lake Boat Dock; that's a City-wide facility?

A. Yes, sir.

Q. And the Fairgrounds Amusement Park; or course, that's a City-wide facility?

A. It is.

Q. And by that, of course, we mean that there is only one in Memphis?

A. That's correct.

Q. So, all of those facilities will be opened to the colored people?

A. They will.

Q. Can you think of any other City-wide facilities that won't be open to them, that is a facility where there is only one in town?

A. No, I don't know of any offhand, Mr. Prewitt.

Q. So it is the Park Commission's desire to make available all of those City-wide facilities to the negroes with all deliberate speed?

A. Consistent with good relations with all the people and trying to avoid strife and turmoil, as you said, and possibly bloodshed.

Q. Has Memphis been singularly blessed by the absence of turmoil up to this time on this race question?

A. It has, and we hope to keep it that way, as far as the Park Commission is concerned.

Q. Is that one of the policies of the Park Commission?

A. It is.

Q. Do you feel that's one of your duties, Mr. Pierotti?

A. It is; to all of our people, white and black.

Q. All right, sir. Let's go to the golf courses.

Your plan contemplates, as you have already read out, opening up all the golf courses on a three-year basis?

A. Less than that; probably two-and-a-half-year basis.

Q. There are seven golf courses in Memphis, are there not?

A. There are.

[fol. 51] Q. Has Mr. Lewis furnished you with a—before we go any further, I will make this plan of the Park Commission Exhibit 3 to your testimony.

A. All right.

Q. Now, let's go to the golf courses.

Mr. Pierotti, I don't know whether you have seen this up-to-date statistical data with reference to the golf players in Memphis.

A. I get this every month, but I don't think I have gotten the one up to May 1st, 1961.

Q. Well, we will introduce this by Mr. Lewis, but for the time being, I would like for you to refer to it.

A. All right, sir.

Mr. Prewitt: Mr. Reporter, I would like to ask you to mark this Exhibit 4, if you will.

Q. Now, Mr. Pierotti, as indicated on this Exhibit No. 4, there are seven golf courses operated by the Memphis Park Commission at the present time?

A. That is correct.

Q. Now, of those seven, Fuller and Douglas have been used exclusively by the negroes up to the present time?

A. That is right.

Q. And the remaining five by members of the white race?

A. That is correct.

Q. Now, in 1960, I notice there were 232,413 golf players?

A. That's correct.

Q. And on the two colored courses I notice Douglas, 8,843, and Fuller, 4,020 players?

A. That's correct.

Q. Or approximately 13,000 golf players out of a total of 232,413?

A. That's correct.

Attorney Hooks: If Your Honor please, I would like to interrupt just a minute and find out for what purpose this [fol. 52] testimony is being introduced. I don't quite follow these figures on the attendance at the golf courses and that type of thing.

Mr. Prewitt: We want to show, may it please the Court, that not only do the negro golfers in Memphis have adequate facilities at the present time, they are not using the facilities that are available to them, and the Court has some discretion on an equity matter of this sort, a motion for a Declaratory Judgment, and they are asking for equitable relief, and in line with the Nashville case, on the Board of Education case in Nashville, the Court must consider local conditions and the Court should consider the facilities that are available and determine what is in the best interest of all the people; so, we want to show what facilities are being offered now, to show that this plan which has been evolved is a fair and equitable plan and show that the Park Commission is exercising good faith. That's the substance of it.

Mr. Hooks: If Your Honor please, we would like to raise an objection to that, because that is not the premise our lawsuit is filed on. It's filed on action by individual plaintiffs. We are not concerned with how many people are using the facilities. The point is that these people who have filed this lawsuit have been denied the use of these facilities. This is the theory of the lawsuit, and I can't see that the figures on how many people use them or the economic laws on it are material to the issues before the Court.

The Court: The Court has the impression from what has gone before in this trial and what is going on at this time that the Park Commission is proposing to integrate, [fol. 53] so to speak, these facilities, and is offering a plan which they evidently contend is feasible and fair and equitable, which will accomplish that, and so evidence of this type would be admissible, the Court would think, with respect to any injunction that might be sought in this case.

Is that your position?

Mr. Prewitt: Yes, sir, if Your Honor please, that's our position, and we say this isn't a case where any injunction ought to be issued, because the officials of the Memphis Park Commission have been acting in good faith and no injunction should lie.

The Court: Are you proposing that the Court approve your suggested plan at this time? Is that what you are proposing?

Mr. Prewitt: Either that, Your Honor, or simply hold that the Park Commission officials have acted in good faith and having acted in good faith, there is no grounds for the issuance of an injunction. As I understand the holdings in the Brown against Board of Education and in the Nashville case, the test is whether or not the local officials are acting in good faith.

The Court: All right. If that is an objection, the objection is overruled.

By Mr. Prewitt:

Q. Mr. Pierotti, I believe when the objection was made, you had testified from the exhibits that there were approximately thirteen thousand negro golf players out of two hundred thirty-two thousand overall players last year? [fol. 54] A. That's what the statement shows, Mr. Prewitt.

Q. Approximately five percent of the golf players were using about thirty percent of the golf courses?

A. Roughly, I think that's about right.

Q. And do you feel that the Park Commission has provided adequate golf facilities for every golf player in Memphis, regardless of his race?

A. We do so feel that way, yes, sir.

Q. Mr. Pierotti, do you feel that it is better on opening up all seven of the golf courses to do that on a stairstep basis?

A. Very definitely. I am very definitely of the opinion that they should not all be opened up at one time.

Q. Do you feel that the golf courses is an area which is less sensitive in this matter of race relations than some of the other areas?

A. Yes, we do.

Q. And have you given that a whole lot of thought?

A. Not only have I, but the other members of the Commission have given this a long, hard look, and a lot of serious thought. This plan which we are evolving, and which we are asking the Court to approve is not one which was gotten up overnight. It was the result of a good many conferences with the members of my Commission and with other people.

Q. And have you conferred with the law enforcing officials of Memphis?

A. Among other people we have conferred with the law enforcing officials and have gotten their opinion on the matter.

Q. And by that I mean the police authorities?

A. Yes, sir.

Q. Now, Mr. Pierotti, as Chairman of the Memphis Park Commission, do you feel that you and the other members of the Commission and Mr. Lewis are in a better position [fol. 55] to determine what facilities should be opened up for use by all citizens than individual negroes or whites?

A. We think we are in a better position to make this determination, Mr. Prewitt, than any other citizen, negro or white.

Q. Now, in making your determination as to any given facility in the City on this question that we are concerned with, are there many matters which you feel must be considered?

A. Yes, there are.

Q. What about the necessity for extra supervisors and employees in the areas which you integrate?

A. We feel that upon integrating any facility it of course involves additional personnel to make the transition period a smooth one.

Q. What about confusion or turmoil in the community?

A. That is a very strong factor in our determination as to when and what facilities should be integrated.

Q. Now, is Memphis—of course, I think the Court can take judicial notice of it, but is Memphis peculiarly located in the south?

A. It is in this respect, that we are—as I recall, we are probably two-thirds white and one-third colored, or about thirty-five—maybe thirty-five to sixty-five. We are located in the southwestern corner of the State of Tennessee, with the State of Arkansas immediately across the river and the State of Mississippi within five or six miles to the south of the city limits of the City of Memphis. And we feel that the surrounding area is probably more colored than there are white. And that these people make use of our facilities.

And that our people—white people and all, a great many in here from this surrounding territory, and in that respect we are peculiarly situated.

[fol. 56] Q. And if this matter of recreational integration is carried too fast, because of the peculiar location of Memphis and the surrounding area, and the percentage of colored people, do you feel you would have a local situation which could result in considerable turmoil if you are not permitted to carry out the program the way you plan to do it?

A. The Park Commission thinks so.

Q. Now, what about the question of revenue from concessions? Is that something that you have tried to consider, too?

A. Well, of course that is also a factor. As Mr. Lewis has stated on his direct examination that about one-third of our budget we must earn that by the income from the facilities and other matters which we are operating for this function.

Q. Are you concerned—

A. (Continuing) —Which is a very substantial amount of money, I believe somewhere in the neighborhood of three-quarters of a million dollars a year.

Q. Are you concerned also with providing the citizens of Memphis, both black and white, with maximum recreational facilities?

A. Yes, we are.

Q. And can you do that, in your opinion, unless you are permitted some discretion as to how to go about this problem?

A. That is correct.

Q. Are you advised as to the number of children that participate in the Park Commission's recreational program yearly?

A. We estimate for the year 1961 it will be probably a million children who are taking advantage of the facilities of the Recreation Department of the Park Commission.

Q. And your experience is a third of that is colored?

A. Our experience is a third of that is colored.

[fol. 57] The Court: While you are on that subject, what does the plan include with respect to playgrounds and community centers?

A. We have a plan on that, if the Court please, and I would rather for Mr. Hale, the Recreation Director there in the Park Commission—

The Court: Well, that is—

A. (Continuing) —Who is in better position to testify as to that than I am.

Mr. Prewitt: Mr. Hale will testify, if Your Honor please.
The Court: All right. This is not the full plan, then?

A. No, sir.

Mr. Prewitt: Mr. Hale has some matters that he will take up later.

Cross examination.

Q. Mr. Pierotti, I believe you are the Chairman of the Park Commission, is that correct?
A. That's right.
Q. And I you are also a practicing attorney at the Memphis and Shelby County Bar?
A. That is correct, just as you are.
Q. And how long have you been practicing in Memphis?
A. Since 1933.
Q. Since 1933. And I believe you have answered some questions on the basis of your legal knowledge as well as [fol. 58] the basis of being on the Park Commission?
A. That is right, together with the advice which we obtain from our attorney.
Q. Mr. Pierotti, the matter of this deed to the Pink Palace, there is some talk of a revertal clause. Has any investigation been made as to who the grantors or his assigns are at this time?
A. I am sure there is.

Mr. Gianotti: I think it is in the report, if Your Honor please. It is in the report.

A. (Continuing) It is probably in Mr. Allen's report to us, which I think you have a copy of there, which is made an exhibit to my testimony.

Q. Do you know what that report says about that?

A. Don't recall offhand, but I am sure, though,—

Q. Do you know who the grantor is in this?

Mr. Prewitt: Well, the deed will speak for itself, Your Honor please, who the grantor is.

A. The grantor was Garden Communities Corporation, a corporation organized under the laws of the State of Kentucky.

Q. Do you know whether that corporation exists now?

A. No, I don't.

Q. So you have no knowledge whatsoever of whether anyone is asserting this right of forfeiture contained in the deed?

A. It would be safe to assume somebody would claim that valuable piece of property out there.

Q. So you yourself will not be able to say as to when that corporation—as to whether or not this corporation is [fol. 59] still in existence?

A. I can tell you personally I do not know.

Q. You didn't know of your own knowledge?

A. I can tell you personally I do not know.

Q. You haven't examined—

A. I haven't examined.

Q. Is that covenant in fact being breached at the present time?

A. In my opinion it is not.

Q. Is there a day for negroes at the Pink Palace?

A. I think it is Tuesday for negroes.

Q. Does the deed require occasional use only?

A. I think that is purely incidental and a minor factor which the grantors have not taken advantage of.

Q. Maybe you don't understand my language. You feel that this deed is being breached now?

A. No, I don't.

Q. No?

A. Because it is not in general use by people other than the Caucasian race.

Q. Well, don't the conditions say that it would be used by Caucasians only? Is that not the condition contained in the deed?

A. That is the condition of the deed.

Q. So that is not being followed by the Park Commission?

A. That is not being strictly followed at this time.

Q. Now, there has been no investigation made as far as you know, as Chairman of the Park Commission, as to whether or not there is in existence now this corporation that deeded this property in 1926?

A. I have no personal knowledge of that. Perhaps Mr. Allen may tell you. I don't know.

Q. Has there been any complaint made by the grantor about negroes using this place on Tuesday?

A. Well, there has not been made to me as Chairman of the Park Commission.

[fol. 60] Q. You have no official knowledge of any complaint?

A. I have not.

Q. (Continuing) —Being made. Of course, are you aware of how many deeds that the City has containing any restrictive covenant based upon use by others than—

A. I don't have that information; no, I do not.

Q. I believe your testimony is that twenty-five parks are intggrated?

A. Twenty-one, I think.

Q. Twenty-one. Do any of those parks have— Were they by gift?

A. No, to my knowledge they do not have any restrictions or limitations.

Q. Then the twenty-one parks are being used in an integrated manner—they do not have any restrictive conditions therein?

A. That is my understanding.

Q. That leaves one hundred and ten other facilities besides those twenty-one; is that correct?

A. Roughly about one hundred and thirty now.

Q. Roughly about one hundred and thirty now. One hundred and ten out of one hundred and thirty?

A. That is right.

Q. Of the hundred and ten, about how many have restrictive deeds—restrictive clauses dealing with use by others—

A. As I told you a minute ago, I do not know.

Q. Does the Park Commission have any type record on this in the file?

A. To my knowledge they do not.

Q. There is no record kept, as you—as far as you know?

A. As far as I know, they don't have that.

Q. Do you know of any other park other than the Pink Palace, which you have answered on this, which is covered by the memorandum prepared by Mr. Allen that has any clause with revertal in the event it is used by other than [fol. 61] of the Caucasian race?

A. Yes, there is Gooch Park, which I mentioned a while ago, has a reverter clause in it if used by anybody other than colored people.

Q. As an attorney, Mr. Pierotti, are you familiar with the Supreme Court ruling in the Gerard College case in Philadelphia? Do you feel the Park Commission has a legal right to operate a park under a covenant restricting its use to certain—to a certain race?

A. Well, there were two decisions in the Gerard case, I think. One was, as I recall it, that you could not, and the later I think there was some confusion and they said they could.

Am I correct on that? I am not as up on this racial law as probably you are.

Q. Was the decision, as far as you recall, that the City or State—no agency of the State or City could operate—

A. That is my recollection, yes.

Q. And the City and State could not use that—that property as long as the City or State agency had any control?

A. That is my recollection. The City of Philadelphia, I understand.

Q. In other words, the City had to divest itself to keep anyone out?

A. That is correct.

Q. Is that the case?

A. I think so.

Q. In the event that some discussion here—and only ask it because the question was raised in direct examination,—that should be found, in other things, that the law is clear that the City Park Commission would not be involved—they could not operate under present law any park with covenants restricting use of the land?

A. I just give you my opinion. I think you are correct in your interpretation of the law.

Q. Now, Mr. Pierotti, at these integrated parks have [fol. 62] there been great incidents of violence?

A. In the integrated parks there has not.

Q. What leads you to believe there would be disorder, if twenty-one integrated, what leads you to think there might?

A. I tell you what leads me to believe that. Every time a facility of the Park Commission is open to all races, I personally receive a large number of anonymous letters and telephone calls to my home from white people in which they excoriate me. And why they pick me I don't know. But for a time because—well, there has been threats to me personally about integrating these parks. And I am of the opinion that with Memphis' peculiar location we may have bloodshed here.

Let me say this, let me say this to you that as far as I am personally concerned, I am going to abide by the rules of this court or get off the Park Commission, because I want no incidents here like they have had in other parts of the south. And I believe that we can live better as a people if you permit us to desegregate these things on a gradual basis. Because there is not any facility that is operated by the City, although perhaps not as close—the nearest to home, that is, but there is not a facility that a colored person can't take advantage of as well as the whites.

Q. Now, I am concerned with your phrase "with the peculiar position of Memphis". I don't quite follow you on "with the peculiar position of Memphis".

A. By that I mean with the surrounding territory is predominantly colored.

Q. Do you think that because they are colored they would promote violence?

A. I think so.

Q. You say that because there are a lot of negroes who [fol. 63] live around Memphis to open the parks that in and of itself would promote violence?

A. I think because of our peculiar location I think it would.

Q. What about our peculiar location. I don't get what—you just say peculiar location.

A. I think Memphis is singularly located. By that I mean we are surrounded by communities that are predominantly colored, in my opinion. I think over in Arkansas, perhaps Crittenden County there close you will find predominantly colored. I think they are predominantly colored. I believe Desoto County down in Mississippi, Fayette County and Tipton County in Tennessee.

Q. You think are going to come here and start fights or violence?

A. No, I don't say that. I hope not.

But by just having your predominance of the population are colored, and I think it would have a bad effect to open up all the parks in the community, all the facilities in the community in the park system. I think it would.

Q. Then other than the people who—the neighboring towns and all the spots close to Memphis,—where taxes are paid to maintain these parks,—but surrounding communities outside of Memphis?

A. I am basing it on what I think would happen in the event every facility in the park system is desegregated at one time.

Q. Are you saying that you think white people in this community would promote violence?

A. I would say that it would be on the part of both people in this community.

Q. And the peculiar location,—when you say the peculiar location of Memphis?

A. But I think this is a situation which I think would be bad.

Q. You think that the people in this community and the [fol. 64] surrounding community are more ignorant than people in these other—in other communities?

A. I don't say that. I think people would feel maybe different.

Q. Are they more prejudiced? Is that what you mean?

A. They possibly could be.

Q. Are they more prone to violence than the people would be in other communities?

A. I don't say that.

Q. Contrasting Memphis with Nashville, do you think Memphis could not open up its parks as Nashville did?

A. I went to school in Nashville. First, I think the population—maybe not as great a percentage of white and colored. And got a different element of people in Nashville than us. Got very few people from Arkansas and Mississippi—got very few people from Arkansas in Nashville and got very few people from Mississippi in Nashville.

Q. You say because of this, the Arkansas and Mississippi, —is there something peculiar about people from Arkansas and Mississippi to make them more prejudiced in the matter?

A. I wouldn't say that. Just say you have a different feeling than the people of middle Tennessee have.

Q. Does it involve racial prejudice?

A. Correct, or one thing I think towards promoting violence here quicker than it would in Nashville.

Q. But your statement is—has there been any bloodshed because of the integration of the twenty-five parks you mentioned already to this date?

A. No, because we are taking it on a gradual basis. That is why we—relations have been good.

Q. Now, you have stated in your direct examination that the Park Commission has conferred with the members of the Commission, with the police authorities and with other [fol. 65] people in relation to this question of desegregation. Is that right? And—

A. That is correct.

Q. Have you conferred with any negroes on the question?

A. Yes, I think some. I have forgotten the name of the group. We met with them several weeks ago. There was a negro minister present. I have forgotten—I think he is a professor at Lemoyne College.

Q. What was the discussion? Was it about the question of desegregation?

A. About the question of desegregation of parks.

Mr. Prewitt: That was Professor Nichols.

Mr. Gianotti: Reverend Nichols.

Q. That is his name?

Mr. Prewitt: That is what he suggested, to open up this on a gradual program?

A. It is my recollection it was.

Q. Mr. Pierotti, I notice this plan you had presented deals with golf courses. And I believe statement has been made the question herein also goes—deals with some other aspects, is that correct?

A. That is correct.

Q. Is the plan—as Chairman of the Park Commission do you have knowledge of whether or not there is a plan to desegregate all public facilities in the City of Memphis?

A. Eventually, yes.

Q. Do you have an idea of how long that eventuality is?

A. No, we do not have.

Q. In particular, Glenview Park and Gaston Community Center?

A. We have not discussed particularly any park.

Q. You have not discussed parks in particular, only dis- [fol. 66] cussed golf courses in particular?

A. As a starter, that is correct.

Q. Without going into the detail, do you have general knowledge of what Mr. Hale is going to discuss?

A. No. As a matter of fact, I talked to him very briefly about it.

Q. With reference to formulation by the Park Commission, or formulation by Mr. Hale, that is—

A. I believe Mr. Hale's formulation—he can't formulate unless we can approve it.

Q. He has, Mr. Pierotti, his plan, then, and you approve, I guess?

A. He has spoken to me and I think it is all right.

Q. Generally what does he cover?

A. Recreation.

Q. Does that cover parks, neighborhood parks, the facilities?

A. That is correct.

Q. Does it cover all one hundred and one parks operated by the Park Commission in the City?

A. No, it does not.

Q. Are you at liberty to say the area it does not cover?

A. Well, for instance, Mr. Hale has nothing to do with the zoo. He has nothing to do with the Art Gallery. He has nothing to do with the Museum. He has nothing to do with several other things that do not—

Q. What is his—what field does he cover?

A. Recreation.

Q. And by recreation, does that include parks like Gaston Park?

A. It would include Gaston Park, yes.

Q. With reference to Gaston and Glenview Park, have they been discussed as possible target dates for desegregation?

A. Not that I know of.

Q. Are you familiar with, Mr. Pierotti, with legal authorities dealing with loss of revenue and the threat of [fol. 67] violence as it affects the question of desegregation of facilities?

A. In a general way, yes.

Q. In a general way. And you are familiar with the fact that it has been held that loss of finances—

Q. Mr. Pierotti, is the plan of the Park Commission based, Mr. Pierotti, on the levelling off of economic loss?

A. That is just one of the factors.

Q. That is one of the factors, the levelling off of economic losses. Is the plan of the Park Commission partially based on the possibility of threat of violence?

A. That is another factor.

Q. Are other factors in considering the plan?

A. Substantially, these are the two main factors, I believe, of the group.

Q. Then you are aware that neither of these factors are legal and valid for presentation of a plan?

Mr. Prewitt: I object to that.

A. I suppose we—

Mr. Prewitt: The Court has suggested about legal argument. I don't agree with you, but we can argue the law later, whether or not these are proper factors.

The Court: Mr. Pierotti has testified a consideration of these things entered into the plan here. And since that is the case, the Court will permit some cross-examination along those lines.

The Witness: Suppose you read it back.

(The last question was read again by the reporter, as requested.)

[fol. 68] A. I am aware of the fact that those are things that should be considered by the Court in determining whether or not this plan should be approved.

Q. Is it your opinion, then, Mr. Pierotti, that the Park Commission has a right to ask this Court to approve the plan?

A. Yes, I think this Court has the right to approve a plan.

Q. Now, in reference to these figures on the users of the golf courses—of the golf players that have been prepared, do you have a copy of that?

A. Yes.

Q. I believe that Douglass Park was opened in '52; is that correct? How long—

A. It so states here, that is correct.

Q. And prior to that time, as far as you know, were any provisions made for negro golfers in Memphis, Shelby County, Tennessee?

A. Yes, they had about a seven hole golf course out at Lincoln Park.

Q. How long had they been in operation? Do you know?

A. It was open when I got there, when I came on the Park Commission, best of my recollection be 1947.

Q. And [illegible]icing those figures, has there been somewhat of an increase in the number of Douglass Park users for the time it has been in operation?

A. Well,—

Q. Three thousand something the first year?

A. I would say as a whole—as a matter of fact, for 1960 Douglass Park had its worst year since '55.

Q. And then you had Fuller Park also, did you?

A. Yes, sir. You asked me particularly about Douglass.

Q. That I understand. I am not contradicting your statement. But didn't you have Fuller Park in 1958?

[fol. 69] A. The Fuller Park was operated—I think it opened in '58. I think I drove the first ball off tee at Fuller Park.

Q. In '60 the two parks, could use these figures, twelve thousand negroes—golfers using the course, is that right?

A. That is correct.

Q. In 1952, according to your statement, the first year when Douglass was first opened, you only had three thousand approximately eight hundred negro golfers, is that correct?

A. In 1952?

Attorney Hooks: Yes.

A. That is correct.

Q. So that there has been a gradual increase of golfers as facilities have been made available. Would that be a fair inference made from that statement?

A. That is true.

Q. Is it your testimony here that negroes do not use the golf courses as much as whites use them, is that untrue?

A. I think that—I would say that is true, they do not use them as much.

Q. Do you think the availability of golf courses has had anything to do with that?

A. Very little. If a fellow wants to play golf he will find a place to play.

Q. Now, Mr. Pierotti, I believe you stated that as far as you know you have no present knowledge of any of the one hundred thirty-one facilities that the Park Commission operates having this reverter clause, none except the one that you discussed here, the Pink Palace, is that correct?

A. That is the only one that has been called directly to our attention, and that was called to our attention not by virtue of—let me say, not by virtue of the fact that we

opened up the facilities, but, as I said, because Mr. Allen was asked to give an opinion on another matter.

[fol. 70] Q. As a member of the Park Commission, as Chairman, you are, you have stated that you are willing to follow what the Court says in this matter?

A. I certainly am.

Q. And you do not know in detail the facilities that are in the plan of the Park Commission for desegregation.

In relation to John Rogers Tennis Court, do you know about that specifically?

A. What is it you want to know about it?

I know about the John Gaston Tennis Court, yes.

Q. John Rogers.

A. John Rogers, yes.

As I said in my statement, we hope to accelerate these facilities, and we will re-evaluate them from time to time, re-evaluate the conditions and the factors that I testified to a moment ago.

Q. Has there been a plan for additional reviewing of negroes at the Pink Palace?

A. No, there has not been, because of this possible reverter.

Q. If Your Honor please, I would like to direct a question to the witness through the Court.

I would like to know the time that Mr. Pierotti plans to be back in Memphis.

A. I will be back Sunday evening, no later than 9:00 o'clock Sunday.

Attorney Hooks: I believe that is all.

The Court: You are through?

Attorney Hooks: Yes.

If Your Honor please, the reason I hesitate is that so many parts of this plan have not been presented, and until the officers are in position to present it, we are not in position, actually, to know what the totality of it is, and if the [fol. 71] other members and other officers know all this, I guess we won't have to call Mr. Pierotti to the stand, and I would like to ask that question. I hope that Your Honor understands what I am trying to say. They have only presented a portion of the plan.

The Court: Is this a business trip you are taking?

The Witness: Yes, it is. It's a director's meeting, which was set many months ago, before this lawsuit was set, as a matter of fact.

By Attorney Hooks:

Q. Do you feel, Mr. Pierotti, that the other members of the Commission and employees of the Park Commission will be in position to answer all the questions?

A. I am sure that Mr. Lewis and Mr. Hale can answer any question, possibly better and with more clarity than I can.

Q. They know more about it, as a matter of fact?

A. As a matter of fact, they do. I am not a paid employee. I am supposed to get a dollar a year, but they are about six years delinquent in paying me that dollar. We make policy. We don't carry out the details of the policy.

Redirect examination.

Q. Mr. Pierotti, on the reasons which counsel for the plaintiffs asked you about, that is why you evolved this plan, I will ask you if you are mindful of providing maximum recreational facilities for all of the people?

A. For all of our people, that's right, sir.

Q. And do you feel that this gradual program is necessary in order to accomplish that objective?

A. That's right, sir.

[fol. 72] Q. And if you are forced into a situation where you have to do it right now, will it affect the recreational facilities available to all of our people?

A. It will, and I am sure Mr. Hale can elaborate on that.

Q. And you want to keep them going at maximum speed?

A. For all of our people, yes.

Q. And it is so set out in this written plan that is Exhibit 4 to your testimony?

A. It is.

Mr. Prewitt: That is all.

H. S. LEWIS

The next witness, having been previously duly sworn, testified as follows:

Direct examination.

Q. Mr. Lewis, I believe you were sworn yesterday?

A. Yes, sir, that's right.

Q. How long have you been Superintendent or Director of the Memphis Park System?

A. Just slightly less than sixteen years.

Q. And that is the last sixteen years?

A. Right, sir.

Q. During that period of time you have been the operating head of the Memphis park system?

A. Yes, sir.

Q. That includes the various parks, playgrounds, golf courses and other facilities you mentioned yesterday?

A. Yes, sir.

Q. Now has this park system grown since you became the head of it?

A. Considerably, yes.

[fol. 73] Q. New parks have been added every year?

A. That's right.

Q. It has more or less maintained its growth with the City of Memphis?

A. Right.

Q. As we all are aware, in the last sixteen years the City of Memphis has grown considerably?

A. That's right.

Q. It has added about 150,000 people.

Now what, if you know, is the approximate ratio or percentage of negroes to whites in the city of Memphis?

A. Thirty-seven percent.

Q. A little over one-third of the people in Memphis are colored?

A. Right.

Q. That is taken, I believe, from the last census?

A. Right, sir.

Q. Now yesterday you introduced into evidence several documents which showed the names of various parks and facilities which are either owned by the City of Memphis and operated by the Park Commission, or owned by others and operated by the Park Commission?

A. Yes, sir.

Q. Now taking these facilities more or less one at a time, I want to address your attention first to the golf courses.

I believe that you stated there are seven golf courses in the city of Memphis that are operated by the Park Commission?

A. That is correct.

Q. And Mr. Pierotti introduced in evidence a sheet, Exhibit 4, which I believe was compiled by you showing the number of golf players in the city of Memphis during the last ten years?

A. Right.

Q. And is that Exhibit 4 an accurate statement of golf players on the different courses?

A. Yes, it was taken directly from our daily records.

[fol. 74] Q. Now as indicated by this statement the number of colored players in 1960 was approximately five percent of the total golf players in the city of Memphis?

A. That's right.

Q. Are you a golfer yourself?

A. Yes, of sorts.

Q. Have you played on all the public courses in the city of Memphis?

A. Yes, sir.

Q. And you are familiar with all the white and colored golf courses?

A. Yes, sir.

Q. What is the best golf course in Memphis?

A. The best one is Fuller.

Q. That is for negro use?

A. Right.

Q. Is it potentially one of the best courses in the United States?

A. It is potentially so.

Q. Is it being developed toward that potential?

A. It is.

Q. You heard Mr. Pierotti testify with regard to the plans for opening all the golf courses to both the colored and white races to all players?

A. Yes, sir.

Q. Beginning in 1962?

A. Right.

Q. From your experience in dealing with golfers, and as operating head of the Park Commission, and from studies made in other cities, do you believe this plan evolved by the Park Commission to open up the golf courses is one that is least likely to cause confusion and turmoil, and to maintain golf facilities so a maximum number of people in Memphis, both of the white and negro race, can use them?

A. I do, sir.

Q. To your knowledge has any colored person in Memphis ever been denied the right to play golf on either Fuller or Douglas golf courses?

A. They have not.

Q. Fuller is in South Memphis?

A. Yes.

Q. The southwestern portion of Memphis?

A. Right.

[fol. 75] Q. Douglas is in the northern portion of Memphis, is that right?

A. Yes, sir.

Q. Now, so much for the golf courses, but one other question.

Do you feel, Mr. Lewis, as managing head of the Park Commission, that it would be unwise to attempt to open all the golf courses to both races at the same time?

A. I certainly do.

Q. Have you discussed this matter with the police authorities of Memphis?

A. I have.

Q. Have you made a study of recreational facilities of other cities in the country, including the south?

A. I have.

Q. Based on all of your studies and your experience as operating head of the Memphis park system, that is for

the last sixteen years, in your opinion is that the best plan?

A. I think it is, in my opinion. Yes.

Q. Now I want to go to the Fairgrounds Amusement Park.

Is the Fairgrounds Amusement Park operated by the Park Commission except for a period when the Mid-South Fair holds its fair?

A. It is.

Q. Is the amusement park open all the year around?

A. No, it is open only in the spring and summer months.

Q. Now does the Park Commission grant concession rights for certain amusement devices in the amusement park?

A. Amusement devices and game and food concessions.

Q. And those—the rental on those is based on a percentage of the gross receipts?

A. In most cases.

Q. And the equipment or amusement devices in many cases are owned by individual persons?

A. Right.

[fol. 76] Q. Are there many such persons in the Fairgrounds Amusement Park who own and operate their own devices and have contracted with the Park Commission?

A. Quite a number.

Q. Do you know whether or not many of these people depend solely on the resources from these as their only means of livelihood?

A. They do.

Q. Do you feel it would be unwise to attempt to change any policy with reference to the Fairgrounds Amusement Park in the middle of the year?

A. It would be very definitely bad.

Q. In your opinion would it affect the contract rights and revenue of these people who have contracted with the Park Commission?

A. It would definitely affect their revenue.

Q. Do you feel it would be fair to these people to change a system which has gone on for many years in the middle of a season?

A. It would not, in my opinion.

Q. You heard Mr. Pierotti state that it is part of the plan to remove all restrictions in the amusement park at the end of this year?

A. Right.

Q. In your opinion is that a wise policy for the Park Commission to pursue?

A. It is. Yes.

Q. Is there only one amusement park operated by the Park Commission?

A. At present, yes.

Q. Of course at the Zoo there are certain rides and amusement devices?

A. That is correct.

Q. As testified by Mr. Pierotti, the Overton Park Zoo has already—all restrictions about admittance of colored as well as white has been removed?

A. Right.

Q. So that both races may be admitted to the Overton Park Zoo at any time the Zoo is open?

A. Right.

[fol. 77] Q. And that restriction was voluntarily removed by the Park Commission in December of 1960?

A. The day after Thanksgiving, 1960.

Q. And the art gallery in Overton Park, the restriction there was likewise removed a few months ago on a voluntary basis?

A. Right.

Q. And the restrictions with reference to the use of Park Commission facilities at McKellar Lake were removed voluntarily?

A. Right.

Q. Now are there any other facilities operated by the Park Commission such as the Zoo, art gallery, amusement park, McKellar Lake boat dock and such, which I referred to yesterday as city-wide facilities, which are not available to all the races?

A. Not to my knowledge.

Q. So that the Park Commission has made available all facilities to both races in the city of Memphis without any discrimination.

A. Yes.

Q. Now let us go to the individual parks which you testified to yesterday.

I believe there are some one hundred thirty-one parks, but approximately twenty-three or so have not been developed?

A. Right.

Q. When you say it has not been developed you mean it is raw land to which no use has been put?

A. To the present time. Yes.

Q. Has it been the policy of the Park Commission over the years to acquire land for future development?

A. It has.

Q. So that—in other words it has been the policy of the Park Commission to acquire land before the area around it is developed?

A. Right.

[fol. 78] Q. That way it is less expensive. I mean, the land can be acquired at less expense by the city?

A. That is correct.

Q. Let's turn our attention to the parks that have been developed.

I believe that number is a little over a hundred?

A. Right.

Q. Mr. Lewis, there has been alleged in this complaint that the Park Commission has operated the park system so as to discriminate against negroes, and that the facilities offered negroes in the Memphis park system have been disproportionate to the number of negroes that live in Memphis, and I want to go over that with you just a minute.

First of all, I want to ask you if the city of Memphis—if, in the city of Memphis, the races are separated housing wise?

A. They are separated housing wise by neighborhoods. Yes, sir.

Q. And do the races, for the most part, in the City of Memphis live in neighborhoods which are either totally or predominantly negro or white, as the case may be?

A. Yes, sir.

Q. Now, the various parks which you mentioned yester-

day, are they or not in practically every instance neighborhood parks?

A. They are.

Q. And where you say that the park is white in character, in practically every instance, is such park in a neighborhood which is totally or predominantly white?

A. In practically every case, yes.

Q. And has it been the policy of the Park Commission over the years to make available neighborhood parks to each race, based upon the character of the neighborhoods?

A. It has.

[fol. 79] Q. And if a neighborhood is predominantly or totally negro, has it been the policy of the Park Commission to offer that facility to the negroes?

A. It has.

Q. And, conversely, to the whites, where the situation is reversed?

A. It has.

Q. Now, has the City of Memphis, over the years that you have been the operating head of the Park Commission, insofar as neighborhoods are concerned, been a static situation, or has there been a changing situation?

A. There has been a changing situation in several neighborhoods.

Q. And as neighborhoods change, as they change from white to colored or vice versa, has the Park Commission tried to stay on top of that change and to recognize it so as to provide facilities for the people who live in the immediate neighborhoods?

A. They have.

Q. Now, at the present time, Mr. Lewis, has such a change been under consideration by the Park Commission in view of the changing character of the neighborhoods around these parks—DeSoto, Bellevue, John Gaston with community center, Brinkley, Malone with swimming pool, and Riverside Playgrounds?

A. There has been.

Q. And in your opinion, as operating head of the Park Commission, will those parks in the near future, in conformance with your practice, be opened up for use by the negroes?

A. It is my opinion it would be necessary.

Q. Your answer is yes?

A. Yes.

Q. One of the witnesses yesterday, I believe, testified with reference to John Gaston Park. I believe she said she took her eight children down there. I have forgotten what the witness' name was, but she testified on the stand.

That is one of the parks to which you refer, is it not?

A. Right.

[fol. 80] Q. And is that park in a neighborhood which is showing a change as to race?

A. That has been changing the past several years, yes.

Q. And have you tried in operating the park system to recognize those changes, so as to provide facilities for as many negroes as possible?

A. We have.

Q. Now, to recapitulate, at the present time there are fifty-eight white parks and twenty-five colored parks and twenty-five parks that are open to both races without any restrictions?

A. Right.

Q. And that present ratio, of course, will be changed as these neighborhoods change and these parks which we just mentioned are opened to negroes and restrictions removed so that they may use those parks?

A. That ratio will change, yes.

Q. Now, swimming pools—there are ten in the City of Memphis, five for white and five for colored?

A. Right.

Q. And this Malone Park is one of the parks on the list here that we mentioned that is in a neighborhood which is changing?

A. Yes, sir.

Q. And if that is changing, it will be six to four?

A. Right.

Q. So that the colored people will have sixty percent of the pools?

A. That is correct.

Q. Although only thirty-seven percent of the population.

Do you consider that discriminating against the colored people in providing less facilities?

A. Certainly not.

Q. Now, on playgrounds operated on property not owned by the Park Commission, I believe you mentioned some fifty-six instances—in some cases they are owned by churches?

A. Right.

[fol. 81] Q. Various churches, Catholic, Protestant and Jewish?

A. Right.

Q. And the Park Commission works with those organizations, do they?

A. They work for them to provide neighborhood playgrounds.

Q. Both colored and white?

A. Yes, sir.

Q. As well as with the various schools?

A. Right.

Q. Colored and white?

A. Right.

Q. And I believe you mentioned that there were thirty instances of playgrounds where the facilities were white and twenty-six for colored?

A. Right.

Q. Do you consider that is discriminating against the colored people in providing facilities for their recreational use?

A. I do not.

Q. Now, community centers—I believe you said there were twelve on Park property, eight for white and four for colored, and, of course, if your recommendation or opinion is followed out in the near future, the Gaston Community Center will be opened for colored use?

A. Right.

Q. And that would change the ratio from seven to five?

A. Right.

Q. And, of course, we have already mentioned the golf courses where your plan is to, on a gradual basis, make all of those available to all the citizens without any restrictions at all?

A. Right.

Q. Now, Mr. Lewis, the recreational director of the Memphis Park Commission is Mr. Marion Hale, is that right?

A. Yes.

Q. And he is charged with the obligation of heading the recreational department under your general supervision?

A. Right.

[fol. 82] Q. Now, how many children make use of the recreational facilities operated by the Memphis Park Commission?

A. Approximately a hundred thousand.

Q. And of that number, I take it, approximately a third or thirty-five percent are colored?

A. Right.

Q. And has it been your practice to provide to those colored children some thirty-five thousand maximum recreational facilities?

A. It has.

Q. And do you offer to those colored children the same recreational facilities and training that you offer to the white children?

A. We do.

Q. What about the supervisors, the people that train the children, colored children, are they on the same pay scale as everybody else?

A. Exactly.

Q. Their educational background and requirements, is that equal to or above that of the whites?

A. It is.

Q. And do you feel, Mr. Lewis, that in order to provide maximum recreational facilities to those thirty-five thousand negro children that this program which Mr. Pierotti spoke about yesterday should be approved so as to allow you some discretion in this field of integration?

A. I do, sir.

Q. Now, if you are forced to integrate this great system that you and others have built up over the years, in your opinion, will it affect these negro children, result in a denial to them of the recreational facilities that you have built up for them over the years?

A. I don't see how it can help but affect them.

Mr. Prewitt: Yes.

The Court: You mean if forced to do it now, is that what you mean?

[fol. 83] Q. If you are forced to integrate all of these recreational facilities, in your opinion, Mr. Lewis, based on your dealings with white and negro alike, would that result in a denial to these thirty-five thousand negro children of substantial recreational facilities which they have been enjoying?

A. In my opinion, it will, yes.

Q. Why do you think that is true, Mr. Lewis, and I will ask you first if you are forced into that situation now without being able to exercise any discretion of your own, would you have to have more or less supervisors and instructors?

A. You would have to have considerably more.

Q. What about policemen to patrol the various playgrounds and parks?

A. In my opinion, we would have to have considerably more policemen.

Q. Since opening up the Zoo, have you had to increase the police protection there?

A. We have.

Q. And if every other facility in Memphis were opened up, in your opinion, would it also have to be increased?

A. It would.

Q. And would that or not be a burden upon all the people of the City of Memphis?

A. It would be a tremendous burden, yes.

Q. In your opinion, Mr. Lewis, is it going to take considerable time and a whole lot of patience and understanding for you and the other people who head the Park Commission to try to work out this problem of racial integration in the public parks?

A. It will, quite a bit.

Q. Is it your desire to offer to every negro child in Memphis the same treatment, the same facilities that are offered to the white people?

A. That is what we try to do to the best of our ability.

[fol. 84] Q. And is that the established policy of the Park Commission?

A. That is the policy, yes.

Q. Now, Mr. Lewis, have you worked with children quite a bit in your capacity as head of the Park Commission?

A. I have.

Q. And the Park Commission is necessarily closely related and deals closely with many children, as you mentioned, about a hundred thousand?

A. Right.

Q. If the recreational program of the Memphis Park Commission is impaired by forced integration, what effect, in your opinion, would that have on these thirty-five thousand negro children and sixty-five thousand white children?

A. We would have to, under the present budget, reduce the number of playgrounds drastically in order to give them full protection.

Q. And would that, or not, result in a denial of recreational facilities to a great number of children, white and negro?

A. It would.

Q. And in your opinion, would that have some relation to juvenile delinquency then?

A. It certainly would.

Q. It speaks for itself, doesn't it?

A. Right.

Q. Do you try to keep as many children off the streets as you can during the summer vacation period?

A. That is the purpose of our program, yes.

Q. And is one of the purposes of that to cut down on juvenile delinquency?

A. It is, yes.

Q. For all children?

A. All children.

Q. Now, Mr. Lewis, have you studied this problem in other cities in the country, both north and south?

A. I have.

Q. And is your opinion based upon a survey of other [fol. 85] cities as well as your experience here in the City of Memphis for the last sixteen years?

A. It is.

Q. Mr. Lewis, how does our recreational program and park system compare to other cities of comparable size in this country?

A. We compare very favorably with cities all over the country. We are recognized as having the best recreational program in the south.

Q. When you say recognized as having the best recreational program in the south, who recognizes that?

A. That is by the American Institute of Park Executives, the Park Commission and Recreation National Organization.

Q. And is that a recognized national organization that rates the various systems?

A. It is.

Q. And Memphis is No. 1 in the south?

A. Right.

Q. Do you want to keep it that way?

A. I certainly do, sir.

Q. For all the people?

A. For all the people.

Cross examination.

Q. Mr. Lewis, I believe you say you have connected with the park system for about sixteen years, is that correct?

A. That is correct.

Q. What is your present title?

A. Director of Parks.

Q. How long have you held that title?

A. My title was changed just recently. I have been Superintendent of Parks that entire period.

Q. You started with the Park Commission as Superintendent of Parks?

A. That's right.

Q. Did you have prior experience in this type of work before you went with the Memphis Park Commission?

A. I had considerable experience with boys in recreation work, and the Boy Scouts.

[fol. 86] Q. To your knowledge, have negro golfers been denied the last three or four years the right to play golf on certain public golf courses in the City of Memphis?

A. They have.

Q. And you stated, I believe, that there were some integrated facilities, integrated parks operated by the Park Commission, is that correct?

A. That is correct.

Q. I believe one of them is Court Square?
A. That's right.
Q. Do they have toilets for negroes in Court Square?
A. No.
Q. Do they have toilets for whites in Court Square?
A. They do.
Q. Are negroes permitted to use those?
A. No.
Q. They have one toilet there?
A. That is right.
Q. As a matter of fact, they have two, one for women and one for men?
A. One for women and one for men, yes.
Q. Are they marked "For White Only"?
A. I am not sure about that.
Q. Under your policy of equal facilities, have you made any provisions or arrangements to put toilets for negroes in Court Square?
A. We have not.
Q. How long has Court Square been integrated?
A. I couldn't answer that accurately; it has been some time.
Q. Was there any publicity given to the fact that it had been integrated?
A. No.
Q. Was there any way that negroes could know that they had a right to use Court Square?
A. Except they used it and weren't chased.
Q. In other words, if I get your statement correctly, they can use any place where the police do not put them out?
A. How is that?
[fol. 87] Q. I say they can use any place where the police do not put them out? Is that your statement?
A. The police do not put them out there.
Q. I say if the police do not put them out of a particular park, then they are free to use it?
A. Certainly.
Q. They would not know, according to your testimony, whether they are free to use it until the police asked them to get out?

A. That could be.

Q. I believe you said that Confederate Park is an integrated facility?

A. That's right.

Q. Are there any supervisors of recreation at Confederate Park?

A. No. It is just a public park.

Q. Are there toilet facilities there?

A. No, there are not.

Q. None at all?

A. No.

Q. Have negroes been advised of their right to use Confederate Park?

A. They have used it. Whether they have been advised or not is a good question.

Q. Does the Park Commission have any policy of public announcement when they integrate a facility?

A. The Park Commission's policy has been to avoid any trouble as to integrating without any fanfare, such as was done at the Zoo.

Q. But there was an announcement that the Zoo was desegregated, was there not?

A. There was a very small announcement, yes.

Q. As to these other integrated facilities that you mentioned in your testimony, has there been any announcement that negroes could use them?

A. There was no announcement that negroes could use them, nor was there an announcement that whites could use places that had been for negroes.

[fol. 88] Q. As I understand your testimony, the criteria is whether or not the police arrest you or run you out?

A. I wouldn't say that.

Q. What is the criteria?

A. The criteria is the parks are open to all races and they use them.

Q. How would the members of the public know that the parks are open to all races if there is no announcement made?

A. By usage.

Q. If the police don't run you out, as you said before?

A. By usage.

Q. You are saying that we are free to go to any park in the City of Memphis that we wish to go to, as long as no one runs us out, is that your testimony?

A. As long as no one asks you to leave.

Q. We are free to go to all of them as long as no one asks us to leave?

A. Yes.

Q. At the point that we are asked to leave, then what is the policy?

A. We are still operating under a segregated park system in that case, and we would ask you to leave, and if you caused trouble by not leaving, we would then call the police.

Q. Who would have the authority to ask us to leave, any member of the public, or would it have to be an employee of the Park Department or the Police?

A. Certainly any member of the public could ask you, but it would have to be park personnel to have any authority as far as the Park Commission is concerned.

Q. Are you familiar with the location of Glenview Park?

A. I am.

Q. Negroes could go there and use that if they are not asked to leave?

A. They would be asked to leave.

Q. They would be asked to leave?

A. That's right.

[fol. 89] Q. Who would ask them to leave?

A. The Director of the park or the police.

Q. If they peacefully refused to leave, what would be the followup procedure of the Park Commission?

A. After being asked in every nice way known, the Park Directors are instructed to call the Park Police.

Q. And have the negroes arrested?

A. Have them forcibly ejected or arrested, yes.

Q. Now, you were asked the question by counsel do you consider it discriminating when negroes—I think that's the word he used—and whites have a certain number of parks available to them based on their percentage. Of course, I pronounce the word negroes. Do you think it is discriminating against negroes to prevent them from using the park to which they live next door?

A. When it is predominantly a white neighborhood, no.

Q. In your opinion, what is the predominant characteristic of the neighborhood surrounding Gaston Park?

A. Around Gaston Park it is predominantly negro now.

Q. Now, if negroes go there, would they be asked to leave?

A. Until the Park Commission's policy opens that park, they would be.

Q. Do you consider this discrimination against negroes?

A. Not since they have, percentagewise, their parks, and since the Park Commission's policy has been to change these parks as the neighborhood changes. We can cite two recent instances when Chandler Park and Bickford Park—when the neighborhood became entirely colored, they were changed to colored parks.

Q. Are you sure that the negroes—that the neighborhood around Bickford Park is entirely colored now?

A. I would say ninety percent or better are colored.

[fol. 90] Q. But it is not entirely colored is it?

A. No.

Q. Do you consider it discrimination against the ten percent of whites that remain that they can no longer use the park there that they have used?

A. It is just as much discrimination against them as it was against the colored when they couldn't use it.

Q. It is discrimination against those?

A. Yes.

Q. And the same thing, I think you said, was discrimination against the negroes in the same degree, since they could not use it prior to the changeover?

A. That's right.

Q. What is the characteristic of the neighborhood around Bellevue Park?

A. Around Bellevue Park it's rapidly becoming a colored neighborhood. In fact, it's predominantly colored at present.

Q. Has not it been predominantly colored for a long number of years?

A. Not a long number of years, but several years, yes.

Q. Did not the Park Commission consider, even before the Supreme Court decision, changing that to a negro

park, during the time that you have been Superintendent of Parks?

A. Would you repeat that?

Q. Did not the Park Commission consider the advisability of changing that park to a negro park before the decision in Brown versus Board of Education, since the time you have been Superintendent?

A. It may have been discussed, but it was not considered for the reason that the facilities on Bellevue Park, such as a lighted ball diamond, was the only one in that neighborhood for white, and Lincoln, which is within three quarters of a mile or a half mile, was for negroes.

Q. Did you state on direct examination that provisions have been made for negroes in all of the City-wide facilities, [fol. 91] is that correct, as opposed to neighborhood facilities?

A. Yes.

Q. Under what classification does Crump Stadium fall, neighborhood or City-wide facility?

A. Crump Stadium is a City-wide facility.

Q. And your testimony was today that it was a City-wide facility?

A. That is right.

Q. So your statement that all City-wide facilities have been integrated is not quite accurate, is it?

A. Well, provisions are made at Crump Stadium for colored to attend football games.

Q. But you stated it is a white facility.

A. That is right.

Q. And it is now?

A. Right.

Q. And it is a City-wide facility?

A. Right.

Q. And your statement that all City-wide facilities have been integrated for negroes is not quite accurate, is it?

A. Well, I think that statement was that that's the only facility of that type. The colored have several football stadiums of their own.

Q. What type of facility is Hodges Field—I believe it is called—in terms of City-wide or neighborhood?

A. What is that, now?

Q. What classification would that fall under?

A. I didn't get the name.

Q. Hodges Field.

A. That is a City-wide stadium as Crump Stadium, Melrose Stadium, Booker T. Washington.

Q. You stated yesterday that it was a white facility?

A. That is right.

Q. And it is also a City-wide facility?

A. I wouldn't say so. It takes care of the white football [fol. 92] games just as Melrose, Manassas and Booker T. Washington take care of the colored football games.

Q. Hodges Field is a City-wide facility, is it?

A. I wouldn't call it that. It comes under the same classification as the others I mentioned.

Q. Now, on direct examination, there was some statement about a plan proposed by the Park Commission for the desegregation of parks, and it seems, and I believe I heard you say that the least amount of confusion would be caused at Pine Hill Golf Course, is that what you said?

A. No, I said the least amount of confusion would be at the golf courses, the stairstep integration as we propose.

Q. What do you base your opinion on that the least amount of confusion would be caused at the golf courses?

A. That is based on the experience of other cities that have integrated their golf courses.

Q. What about confusion at tennis courts?

A. What about it?

Q. If they were integrated.

A. I think there would be some confusion.

Q. More confusion than there would be on golf courses?

A. Yes.

Q. What about Crump Stadium?

A. Well, Crump Stadium hasn't been mentioned, but as far as being desegregated, the plan would include Crump Stadium in a very short period of time.

Q. Now, what other cities have you studied, Mr. Lewis, in your study that you mentioned of other cities? What cities have you studied?

A. To mention a few—Atlanta, Nashville, Dallas, New Orleans.

Q. Atlanta, Nashville, Dallas and New Orleans?

A. Yes.

[fol. 93] Q. Have you studied the situation in Montgomery, Alabama?

A. No, I have not.

Q. Where they closed all the parks.

You don't know about that?

A. I know about it.

Q. You do know about that?

A. Yes.

Q. But you made no study of it?

A. No.

Q. Have they integrated the parks in Atlanta?

A. They have integrated golf courses in Atlanta.

Q. Have they integrated anything other than golf courses in Atlanta?

A. Some few facilities. They have not integrated tennis courts, if that—

Q. What other facilities, if you know, have they integrated in Atlanta?

A. They have integrated their golf courses and one or two of their centers.

Q. Has there been a great incidence of violence from the integration of the golf courses and one or two of their centers?

A. But there has been some trouble, but not a great deal to my knowledge.

Q. Has there been any bloodshed?

A. Not to my knowledge, myself.

Q. Has there been any violence?

A. Not to my knowledge.

Q. Do you have any trouble on the playgrounds?

A. Some.

Q. Have you called the police?

A. Some rowdy and trouble makers, right.

Q. Both white and negro?

A. Mainly negro.

Q. Mainly negro?

A. Right.

Q. Do you ever have to call them at the white parks?

A. Very rarely.

[fol. 94] Q. You don't have any trouble on the white parks?

A. We have some.

Q. But you don't have to call the police to handle them?

A. Occasionally, but not as much as for the negro parks.

Q. So that the study in Atlanta did not give you any outlook on anything except the golf courses predominantly, is that correct?

A. That was the purpose of the study.

Q. In New Orleans what did you study?

A. The golf courses.

Q. Have they integrated the golf courses in New Orleans?

A. The City Park golf course, yes.

Q. Have they integrated any other facilities there?

A. Not to my knowledge.

Q. In Dallas what have they integrated?

A. In Dallas they have integrated the zoo and the golf courses.

Q. Have they integrated anything other than the zoo and the golf courses to your knowledge?

A. I don't know.

Q. In Nashville what have they integrated?

A. In Nashville they have integrated the golf courses.

Q. Have they integrated any other facilities?

A. Not to my knowledge.

Q. So you have no experience factor about violence in anything other than golf courses, do you?

A. That was the purpose of the study was golf courses.

Q. And so you could not give an opinion on whether there would be violence based on integration of other facilities on your orders because your study did not include anything other than golf courses, is that right?

A. Golf courses and tennis courts.

Q. So that the opinion you have ventured to give on direct examination to Mr. Prewitt has to do with golf courses only?

A. That's right.

[fol. 95] Q. Now, what do you base—you say there would be violence, and I don't know whether you used the term "bloodshed" or not, probably said "confusion". Did you go any further than "confusion" if there was integration of the parks?

A. I don't recall; don't believe—

Q. You have taken the term "confusion". But what do

you mean by there would be "confusion" if the parks were desegregated?

A. Well, from our own experience here in Memphis.

Q. In what particular?

A. So far as particulars are concerned, one of the closing exercises for negroes at Lincoln Park, we had bloodshed and shootings and knifings, and it became necessary to break that down into separate closing exercises because of the problems we had.

Q. Were colored and whites having closing exercises, you say?

A. No.

Q. This was not a problem connected with integration?

A. This was a problem connected with violence.

Q. It had nothing to do with desegregation?

A. No.

Q. Or integration?

A. No.

Q. Is that correct?

A. Yes.

Q. Now, can negroes use the rides in the zoo?

A. Yes, sir.

Q. Are those rides operated by the Park Commission or by private concessionaires?

A. They are operated by both.

Q. They are operated by both. Do they have contracts similar to the ones that are held at the Fairgrounds by them?

A. They do.

Q. And can negroes use the toilet facilities at Overton Park zoo?

A. They have—

[fol. 96] Q. (Continuing) On an integrated basis?

A. They have separate toilet facilities.

Q. They have the toilet facilities segregated at the zoo, is that right?

A. That's right.

Q. Has there been any violence in the zoo since the integration of the zoo?

A. No, because we have put additional police there to see that there was not. There have been instances of reported violence which we have been unable to pin down.

Q. Mr. Lewis, does the Park Commission have its own police department?

A. We do.

Q. Do they operate under the jurisdiction of the Memphis police department or directly under the Park Commission?

A. Directly under the Park Commission.

Q. Do you know how many officers you have employed in that department?

A. We have fourteen.

Q. You have fourteen. If I understand your testimony correctly, you are saying that you feel that if the facilities that are operated by the Park Commission are opened there will be violence, and that is one reason you don't want them opened?

A. If they are opened all at once.

Q. There will violence?

A. I feel there will be violence.

Q. Are you also saying some of the private concessionaires at the Fairgrounds or other places may lose money? Is that one of the reasons for not wanting to do this?

A. That is correct.

Q. What other reason do you have for not wanting to open the parks other than the possibility of violence or the possibility of economic loss to some of the concessionaires? What other reasons do you have for not wanting to open the facilities to all citizens?

A. You are asking me something that is not prerogative [fol. 97] to answer. That is the Park Board body. They do it.

Q. Do you have an opinion, other than the two factors we are there mentioning, do you have an opinion?

A. I have no opinion other than it would cause confusion or trouble if we opened them.

Q. We mentioned that; we mentioned two?

A. Yes.

Q. The possibility of violence you mentioned, and the possibility of economic loss. You had that opinion. And I am not of course addressing you in your personal capacity, for I understand you have a right to believe whatever you will. But as Superintendent of the Park Commission, di-

rector of parks, is there any other reason you think these facilities could not be opened other than the possibility of violence and the threat of economic loss? Is there any other reason that you know of?

A. No, I can't think of any specific reason.

Q. Do you have confidence that our Memphis police department could maintain peace and order in the city?

A. I have discussed, as has been shown in the testimony, I have discussed it with police officers and they do not think they could handle it with the present force if everything was integrated at one time.

Q. Do you feel they could call in additional help to control whatever situation might arise?

A. Call additional help?

Attorney Hooks: Yes.

A. From where?

Q. From the Sheriff's Department, State Highway Patrol, National Guard, Federal Marshals?

A. No, they would be in a position to determine the matter.

[fol. 98] Q. You are saying you believe the City of Memphis would not have—if the Court should say facilities in Memphis should be integrated, you are saying you don't believe the citizens of Memphis would obey the orders of this Court or any court?

A. I didn't say that. I said it would be hard for everything to be integrated at once and be controlled. We have law breakers in the City of Memphis, on anything else.

Q. I realize that. But you say you feel there would be so much law breaking you couldn't control it?

A. That is the opinion of those in charge, not myself.

Q. You have no opinion?

A. I have voiced my opinion.

Redirect examination.

Q. State whether or not, Mr. Lewis, in your opinion if you are not permitted to exercise your discretion—and when I say "your" I mean you and the other responsible officials—will these thirty-five thousand negro children—will their rights to use facilities be impaired?

A. Yes. I mentioned the confusion of the whole area.

Q. So that many thousands of negro children who aren't in this courtroom today would have some rights cut off?

A. Right.

Q. As well as many thousands of white children. Is that your opinion or not?

A. That is my opinion, yes, sir, as stated before.

The Court: Mr. Lewis, I believe Mr. Pierotti testified yesterday that the tennis courts were not specifically included at this time under this plan the Park Commission was proposing.

[fol. 99] And I believe, if I recall Mr. Pierotti's testimony, it was to the effect that that would be taken care of under this—what he said, acceleration of the plan.

Give us your opinion as to the approximate date you think the tennis courts there would be opened up to all comers. Can you do that?

A. I can do it in a sort of back-hand way, Judge.

That particular park where the John Rogers tennis courts are operated is a very valuable piece of property. There is a possibility that that will no longer be a park, due to the development of the Housing Authority in that neighborhood and the value of that land. The Park Commission has for quite a while felt that that land was too valuable to operate tennis courts on, where there is not a great number of tennis players living in that immediate vicinity. And for that reason I would not be able to give any definite time. We think it will not be there too long.

Recross examination.

Q. I would like to ask one other question. You don't think it will be there. Just say it is just there two more months, are there any plans to let negroes use it?

A. Not under the proposed plan, no.

The Court: All right, sir. You don't think it worthwhile, then, just for a certain time, you don't think it worthwhile to project any definite plans with respect to opening it up to all comers for just the short time—

A. That is right.

[fol. 100] CHIEF JAMES C. MACDONALD

The next witness, having first been duly sworn, testified as follows:

Direct examination.

Q. This is James C. Macdonald and you are Chief of Police of the city of Memphis?

A. Yes, sir.

Q. How long have you been with the Police Department?

A. Some twenty-one years.

Q. How long have you been Chief of Police?

A. Since 1954.

Q. Chief Macdonald, for the past six or seven years state whether or not you have given much time and thought and consideration of the problem which we are talking about here today?

A. We have.

Q. I believe you testified in the Evers Case against Dwyer and others?

A. That's right.

Q. Since that time have you had additional experiences with this problem?

A. Yes, we have.

Q. Will you briefly outline some of those experiences such as sit-ins and buses and things of that nature?

A. Well, we have had many calls on the trouble we have had on the buses since they have been integrated.

Q. When you get a call of that nature state what the policy of the Police Department is with regard to such a call?

A. When we get a call such as this we can't take chances, we don't know how big a problem it is, and our instructions are to send three or four cars out and to get there as quick as possible to keep down any violence.

[fol. 101] Q. State whether or not in your opinion that is good policing?

A. We think it is.

Q. State whether or not it has worked fairly well?

A. So far it has.

Q. You have discussed the matter now pending before

the Court, and especially the plan of the Park Commission, with officials and attorneys of the Park Commission?

A. That's right.

Q. In your opinion, and with your experience, and from a police standpoint, Chief Macdonald, do you think such a plan as they have should be given consideration?

A. I do.

Q. Why do you say that?

A. Well, there is no doubt in my mind, and I am speaking as a law enforcement officer, that if at this time they were all integrated at one time we couldn't handle it.

There is no doubt in my mind we would have bloodshed if that happened.

Q. Why do you say you don't think you could handle it?

A. I think it will be on such a wide scale we don't have the officers to handle it.

Q. You are talking about the square mile area of the city of Memphis and the various points you would be called to?

A. I am.

Q. How many policemen, the average number, do you have on the Police Department?

A. I believe about 725 at this time.

Q. Now comparing the gradual plan with an immediate plan what do you think, from your experience, would likely happen if the various facilities of the Park Commission—I believe you are familiar with them?

A. Yes.

[fol. 102] Q. (Continuing) Golf courses, recreational programs, community centers, swimming pools, and such.

If all of these facilities are immediately desegregated what, in your opinion, would happen?

A. I think we would have chaos, and I think they probably would have to be closed, and I think a lot of good will would be destroyed.

Q. Over a period of years do you think there has been a great deal of good will created in the city of Memphis?

A. I know there has.

Q. Over what period of time?

A. I have been with the Police Department twenty-one years and we have always tried to get along, and have.

Q. Has it existed all that time?

A. Yes, sir.

Q. In other words, you have gone over this plan with members of the Park Commission and in your opinion you think it is a reasonable plan?

A. Yes, for this reason.

We will have a little idea of what is coming off and can lay our groundwork for it and hope to be able to handle the situation.

Q. Do you believe that in starting with the golf courses that a certain amount of good judgment has been used on the part of the Park Commission?

A. Well, I thought the plan as a whole was a good one, and I think now it is a good one.

Q. What about timing from the overall standpoint.

I believe this Brown case was decided in 1954, and you are familiar with the fact that since that time a certain number of facilities in Memphis have been opened on a non-segregated basis; libraries, zoo and other facilities.

Do you have any comment to make with regard to the timing that might be important in considering the overall [fol. 103] effect it might have on both races in this particular area?

A. I think the key to it is the timing, where everybody—where it would be on a gradual basis where the hot-heads wouldn't have a chance to act.

Q. Do you think we have been fortunate or unfortunate with so-called agitators in this community as compared to other communities?

A. As a whole, yes, sir.

Q. You don't think we have had the agitation in Memphis that has been in other places?

A. That's right.

Q. What, in your opinion and from your experience, happens when this agitation starts?

Does it create violence or a quiet atmosphere?

A. Well, you take a strike, for instance.

You have a few in any bunch that will agitate trouble. I have seen it a lot of times that a few will cause a lot of people to get in trouble.

I don't think we need that. I think we can handle our problem ourselves.

Q. Are you familiar with the incident at Walgreen's when the crowd became increasing in numbers, and what action did the Police Department take, whether you moved in immediately or sat by and waited and watched the situation?

A. When we first got the call it was our plan to let them work it out among themselves if there was no violence.

After about twenty or thirty minutes the crowd was so violent that if we hadn't made the arrest we think somebody would have been hurt real serious.

Q. Were you getting reports from time to time about the attitude of the people in and around Main and Madison during that time?

[fol. 104] A. Yes, we had detectives in the store and I was on the telephone with them all the time. They was letting me know what was happening from time to time.

Q. I think that about covers it.

We have had some testimony on this but we will go into it very briefly.

The population in the area surrounding Memphis, would you say that is predominantly white or colored?

A. I think the outlying territories are mostly colored.

Q. Is that considered to be the metropolitan trade area of Shelby County?

A. Yes, sir.

Q. State whether or not we have many visitors from this area that use the facilities of the city of Memphis?

A. I think there is a great number. They come in from all around Memphis.

Q. State whether or not that enters into your judgment as to whether or not this is a reasonable plan which is submitted by the Park Commission?

A. I think it is reasonable, yes.

[fol. 105]

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed July 27, 1961

This cause came on for hearing upon complaint of plaintiffs and answer of defendants, and the Court, having heard and considered all of the evidence, including depositions, oral testimony and exhibits thereto, and having considered the entire record in this action, finds the facts and states the conclusions of law as follows:—

FINDINGS OF FACT

I.

The Court has jurisdiction of this action under Title 28 U. S. C. Sections 1343 (c), 2201 and 2202, and Title 42 U. S. C. Sections 1981 and 1983.

II.

Plaintiffs are Negro citizens of the State of Tennessee, who reside in the City of Memphis, and have brought this action on behalf of themselves and as members of a class of persons consisting of other Negro citizens of the City of Memphis.

III.

The Memphis Park Commission is an agency or department of the City of Memphis, a municipal corporation of the State of Tennessee, and said Park Commission is composed of five (5) Commissioners duly appointed by the Mayor and Commissioners of the City of Memphis. Said Park Commissioners control the operation of the Memphis Park System, with the management thereof being delegated to defendant, H. S. Lewis, Director of Parks.

[fol. 106]

IV.

The City of Memphis has a population of approximately five hundred thousand (500,000), thirty-seven per cent

(37%) of which are Negro, and sixty-three per cent (63%) are White (1960 Census). Memphis is located in the extreme southwest corner of Tennessee and is bounded on the west by Arkansas and the south by Mississippi. The population of the adjoining counties in Arkansas, Mississippi and West Tennessee is predominantly Negro.

V.

There are one hundred and thirty-one (131) parks owned by the City of Memphis and operated by the Memphis Park Commission. These parks fall into four (4) categories:—

(1) Twenty-three (23) are undeveloped; that is, raw land.

(2) Twenty-five (25) are used without restrictions by members of both races.

(3) Fifty-eight (58) are used by members of the White race only.

(4) Twenty-five (25) are used by members of the Colored race only.

VI.

With very few exceptions, the parks reserved for Negroes are in neighborhoods which are completely or predominantly Negro; and likewise, the parks reserved for White people are in neighborhoods which are completely or predominantly White. In the City of Memphis, the races are separated by neighborhoods, and the Park Commission has consistently followed neighborhood patterns in providing [fol. 107] recreational facilities for members of both races; and it has been its policy to remove restrictions applicable to Negroes as neighborhoods are converted, by voluntary action, from White to Negro, as early as practicable. At the present time, the Park Commission proposes in the near future to remove all restrictions as to use by Negroes in the following parks:—

(1) DeSoto;

(2) Bellevue;

(3) Gaston Park with Community Center;

(4) Brinkley;

(5) Malone Park with swimming pool; and

(6) Riverside Playground.

VII.

The following recreational facilities are operated by the Memphis Park Commission:—

(1) Boat dock and ramp at McKellar Lake, which is operated on an integrated basis.

(2) Ten (10) swimming pools—five (5) reserved for White use and five (5) for colored; and when Negroes are admitted to Malone Park with its swimming pool, these figures will be changed accordingly.

(3) Sixty-one (61) playgrounds on City owned property controlled by the Park Commission—forty (40) reserved for White use and twenty-one (21) for use by Negroes.

(4) Fifty-six (56) playgrounds and facilities operated by the Park Commission on property owned by churches, [fol. 108] private groups and the School Board—thirty (30) of which are reserved for White use and twenty-six (26) for Negro.

(5) Twelve (12) community centers with gymnasiums on City owned property—eight (8) of which are reserved for White use and four (4) for Colored; and when restrictions are removed with reference to Gaston Community Center, these figures will, accordingly, be changed.

(6) Seven (7) golf courses—five (5) reserved for White use and two (2) for Colored.

VIII.

The Recreational Department of the Memphis Park Commission is rated by competent authorities as the best in the South. Its recreational program for Negroes is the finest in the country. Approximately one hundred thousand

(100,000) children participate in one or more of the recreational activities sponsored by the Memphis Park Commission—of this number approximately thirty-five thousand (35,000) are Negroes. The Recreational Department of the Park Commission sponsors many and varied types of recreational activities, including, but not limited to, competitive sports, such as baseball and basketball, dancing and many other activities. The Recreational Department headquarters itself is operated on an integrated basis, and all Negro Supervisors and Directors are paid on the same salary schedule as the White Supervisors and Directors; and the qualifications for such Negro Supervisors and Directors are equal to or greater than that of their White counterparts.

IX.

Defendants have heretofore operated twenty-five (25) parks in the City on a nonsegregated basis; and have re- [fol. 109] cently integrated Overton Park Zoo, Art Gallery in Overton Park, and the Park Commission facilities at McKellar Lake. In furtherance of its gradual program of integration, the Park Commission has evolved the following plan and the following facilities will be open to all races, without restrictions, at the dates indicated:—

(1) The Fairgrounds Amusement Park at the conclusion of the present year.

(2) Pine Hill Golf Course, January 1, 1962.

(3) Fuller Golf Course, February 1, 1962.

(4) Riverside Golf Course, March 1, 1962.

(5) Audubon Golf Course, January 1, 1963.

(6) Douglass Golf Course, February 1, 1963.

(7) Overton Park Golf Course, March 1, 1963.

(8) Galloway Golf Course, January 1, 1964.

X.

Defendants have acted and are acting in good faith in recognizing the constitutional rights of the Negro citizens

of Memphis to make use of facilities under Park Commission control on a nonsegregated basis.

XI.

In considering the question of good faith of defendants in recognizing the constitutional rights of plaintiffs and other Negro citizens, as well as the plan and program evolved by defendants to desegregate the Memphis Park System, the Court has given consideration to the following:—

[fol. 110] (1) Importance of time to accomplish change-over from a partially segregated system to an integrated one.

(2) Good will and understanding heretofore obtaining between the races.

(3) The fact that, pending the transition period now in progress, ample recreational facilities, under the operation of the Park Commission, will be available to all Negro citizens of Memphis, and no Negro will be denied the right to avail himself of those facilities.

(4) Maintenance of law and order.

(5) Avoidance of confusion and turmoil in the community.

(6) Revenues available from concessions operated on park property.

(7) The fact that immediate integration would result in a denial to a substantial number of citizens, both Negro and White, of an opportunity to avail themselves of recreational facilities now afforded to all citizens of Memphis.

(8) The constitutional and other legal rights of all citizens, both White and Colored.

XII.

Immediate forced integration of all facilities of the Park Commission would be unwise under all the circumstances as presented by the proof. The plans and programs evolved

by the Park Commission properly take into account the constitutional rights of Negro citizens without overlooking many other factors, as hereinabove set out.

[fol. 111] XIII.

The plan of defendants for integrating Fairgrounds Amusement Park and all of the public golf courses is reasonable, fair and equitable and should be approved.

XIV.

If the property on which John Rogers Tennis Courts are located is not sold or abandoned for use as tennis courts, consideration should be given by defendants to removal of all racial restrictions on these tennis courts by January 1, 1962.

XV.

Integration of playgrounds and community centers operated by defendants is a matter in the interest of all citizens of Memphis, both White and Colored, and calls for more study. No specific terminal date for such integration can be set at this time. Defendants should file plan for integration of such facilities within six (6) months from June 15, 1961, and at that time, such plan can be given proper consideration by the Court.

XVI.

The City of Memphis acquired Pink Palace Museum and property on which it is located by deed dated August 2, 1926 from Garden Communities Corporation. This deed provided "said building and grounds shall be devoted wholly and exclusively to public uses for the benefit of persons of the Caucasian race only and as a conservatory, art gallery, museum of art or natural history, library and/or for general recreational purposes in connection with the Memphis Park System, including parks adjacent thereto * * *." Said deed also reserved unto the grantor, or its as-[fol. 112] signs, after notice as provided in the deed, the right to reenter and hold the same as of its former estate in the event of breach of the above condition.

XVII.

Negro citizens of Memphis have been permitted to make use of the facilities of Pink Palace Museum on one day per week and this use has been permitted without any apparent complaint on the part of said grantor, or its assigns; however, said deed in providing for forfeiture contains the following additional language: "A waiver for any period of time of a breach of either or any of the foregoing covenants and conditions shall not preclude a forfeiture for a continuance thereof after notice as above specified."

XVIII.

The "Advisory Board Memphis Museum" recommended to the Memphis Park Commission on January 6, 1959 that the Museum property be sold for residential purposes and that a new Museum be built on other City property. In response to this request, J. S. Allen, Esquire, the then Park Commission Attorney, submitted comprehensive report and summary of titles to the property involved and stated in his report dated February 5, 1959 "that neither the City nor the Park Commission could safely sell or cease the use for museum or park purposes as to any of the respective properties conveyed by these deeds."

Said report and opinion was made before the present lawsuit was filed.

XIX.

Defendants have evinced a willingness to remove all race restrictions obtaining at Pink Palace Museum, except for the fact that they feel a removal of all restrictions might [fol. 113] result in a loss of this valuable property to the City and the Park Commission.

XX.

Defendants' present policy with reference to Pink Palace Museum is not based upon any effort to deny Negro citizens of Memphis the right to use of this facility, but rather is based upon a policy of attempting to preserve title to the property.

Conclusions of Law

I.

Compulsory segregation on the basis of race in the public schools violates the provisions of the Fourteenth Amendment to the Federal Constitution.

Brown vs. *Board of Education of Topeka*, 347 U. S. 483, 74 S. Ct. 683, 98 L. Ed. 873.

II.

The rule in the *Brown Case* has been extended to the field of public parks and recreational facilities.

Dawson vs. *Mayor and City Council of Baltimore City*, 220 Fed. 2d 386, (U. S. C. A. Fourth, 1955); affirmed 350 U. S. 877, 100 L. Ed. 774; *City of St. Petersburg* vs. *Alsup*, 238 Fed. 2d 830 (U. S. C. A. Fifth Circuit, 1956).

III.

Full implementation of the constitutional principles as announced in the *Brown Case* requires solution of varied local problems. Local authorities, and in this case the responsible Park Commission officials, have the primary re- [fol. 114] sponsibility of elucidating, assessing and solving these problems. The District Courts have the obligation of determining whether the action of local authorities constitutes good faith implementation of the governing constitutional principles; and in fashioning and effectuating decrees, the Court is guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.

Brown vs. *Board of Education of Topeka*, 349 U. S. 294, 99 L. Ed. 1083 (Second decision decided May 31, 1955).

IV.

Delay in desegregation of public parks and recreational facilities does not amount to a denial of the constitutional

rights of Negro citizens where a good faith attempt is being made by local officials to abolish segregation on a gradual basis.

Kelley vs. *Board of Education of City of Nashville*, 270 Fed. 2d 209 (U. S. C. A. Sixth Circuit, 1959); *Aaron* vs. *Cooper*, 243 Fed. 2d 361 (U. S. C. A. Eighth, 1957).

V.

In determining whether defendants are acting in good faith in recognizing the constitutional rights of Negro citizens to make use of the Park Commission facilities on a nonsegregated basis, it is proper for the Court to consider (1) local conditions and local problems as to facilities, and teacher or supervisory personnel, as well as local prob- [fol. 115] lems of maintaining, during the transition period, maximum recreational facilities for all citizens, White and Negro; (2) importance of time to accomplish change-over from a partially segregated system to an integrated one; (3) good will and understanding heretofore obtaining between the races, and (4) avoidance of confusion and turmoil and maintenance of law and order in the community during the transition period.

Brown vs. *Board of Education*, *supra*; *Aaron* vs. *Cooper*, *supra*; *Kelley* vs. *Board of Education of City of Nashville*, *supra*.

VI.

Injunctive relief to require immediate desegregation of all facilities of the Park Commission should not be granted where defendants have acted in good faith and need additional time to accomplish complete desegregation of Park Commission facilities.

Aaron vs. *Cooper*, *supra*; *Kelley* vs. *Board of Education of City of Nashville*, *supra*.

VII.

"Only the constructive use of time will achieve what an advance civilization demands and the Constitution confirms."

Cooper vs. *Aaron*, 358 U. S. 20, 3 L. Ed. 2d 19, 78 S. Ct. 401 (concurring opinion of Mr. Justice Frankfurter at 3 L. Ed. 2d 22); *Kelley* vs. *Board of Education of City of Nashville, supra.*

[fol. 116]

VIII.

The burden rests upon defendants to establish that additional time is necessary, in the public interest, and is consistent with good faith compliance of the governing constitutional principles at the earliest practicable date.

Brown vs. *Board of Education of Topeka* (Second decision), *supra; Kelley* vs. *Board of Education of City of Nashville, supra.*

IX.

During the transition period from partial segregation to complete desegregation, the District Court should retain jurisdiction.

Brown vs. *Board of Eduction of Topeka* (Second decision). *supra; Kelley* vs. *Board of Education of City of Nashville, supra; Aaron* vs. *Cooper, supra.*

X.

Under Tennessee law, if the condition respecting race in the Pink Palace Museum deed is breach, there is a possibility that the City of Memphis might lose title to this valuable property. The determination of the legal effect of the conditions in said deed is complex and difficult to determine without an adjudication by a Court of competent jurisdiction.

Yarbrough vs. *Yarbrough*, 151 Tenn. 221, 269 S. W. 36.

XI.

The Chancery Court of Shelby County, Tennessee has jurisdiction to determine the legal effect of said conditions [fol. 117] in the Pink Palace Museum deed; and if the State courts should determine that the City's title would not be affected by desegregation of said Museum, there would be no question remaining for decision by this Court. Consequently, this is a proper case for application of the doctrine of abstention under which adjudication in this Court of all matters with reference to Pink Palace Museum may be stayed pending determination by the State courts of the legal effect of said conditions in the Pink Palace Museum deed relating to race.

Harrison vs. *NAACP*, 360 U. S. 167, 3 L. Ed. 2d 1153, 79 S. Ct. 1025; *Louisiana Power & Light Co.* vs. *Thibodaux*, 360 U. S. 25, 3 L. Ed. 2d 1058, 79 S. Ct. 1070; *Annotation "Discretion of Federal court to remit relevant state issues to state court in which no action is pending"*, 3 L. Ed. 2d 1827.

Conclusions of Fact and Law

Defendants have shown by a preponderance of the evidence that additional time is necessary to accomplish full desegregation of all facilities operated by the Memphis Park Commission, and defendants have further shown that their plan and program for gradual desegregation is necessary, in the public interest, and is consistent with good faith implementation of the governing constitutional principles as announced in *Brown* vs. *Board of Education*, *supra*, taking into account all of the local conditions and problems hereinabove set out; and the Court has concluded, in the exercise of its discretion, that the prayer for declaratory judgment and injunctive relief should be denied.

.....

Judge.

[fol. 118]

IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed June 20, 1961

This cause came on to be heard upon complaint of plaintiffs and answer of defendants thereto; and the Court, after hearing all the evidence presented at the hearing, rendered opinion under date of June 15, 1961, which is attached hereto and made a part of this Judgment.

The relief sought by plaintiffs is the immediate desegregation of all park and recreational facilities operated by defendants. Defendants, in recognizing the constitutional rights of all Negro citizens to use on a nonsegregated basis the facilities controlled by defendants, have proposed the following plan, to-wit:—

"Having heretofore, before the filing of this suit, provided twenty-one (21) parks in the City on a nonsegregated basis and having recently removed restrictions at Overton Park Zoo, Art Gallery in Overton Park and the boat dock at McKellar Lake, the Park Commission, following its practice already adopted, has evolved the following plan, and the following facilities will be opened to all races, without restrictions, at the dates indicated:—

(1) The Fairgrounds Amusement Park at the conclusion of the present year.

(2) Pine Hill Golf Course, January 1, 1962.

(3) Fuller Golf Course, February 1, 1962.

(4) Riverside Golf Course, March 1, 1962.

(5) Audubon Golf Course, January 1, 1963.

(6) Douglass Golf Course, February 1, 1963.

(7) Overton Park Golf Course, March 1, 1963.

[fol. 119] (8) Galloway Golf Course, January 1, 1964.

The Park Commission proposes to follow the foregoing schedule. This program, which is in line with

practices already developed and evolved by the Park Commission, may be accelerated, subject to many matters which the responsible officials of the Park Commission may consider from time to time. These include diverse local conditions, such as maintenance of law and order, avoidance of confusion and turmoil in the community, efforts to provide maximum use of park facilities for all citizens, regardless of race, revenue available from park concessions, together with a proper recognition of legal rights of all citizens, White and Negro, under State and Federal law. The program of the Park Commission is not one based on any denial of any constitutional rights which either the Negroes or Whites may have, but is so designed and conceived as to provide maximum recreational facilities for the maximum number of Memphis citizens in the area where such citizens reside."

The Court, after hearing all the evidence, is of the opinion that the foregoing plan should be approved; and the Court is of the further opinion that defendants should submit to the Court a further plan with respect to integration of playgrounds and community centers within a period of six (6) months.

Any adjudication with respect to the Pink Palace Museum shall be stayed by the Court until the courts of Tennessee have an opportunity to decide questions of title relating to that facility; and defendants shall prepare and file suit under the Declaratory Judgment Act of Tennessee in the [fol. 120] Shelby County Chancery Court and take such necessary steps so as to secure a full adjudication of all matters herein involved which might affect the title to said property.

The Court is of the further opinion that defendants have acted in good faith, under all the circumstances herein involved in recognizing the constitutional rights of plaintiffs and other Negro citizens of Memphis to make use of the facilities operated by defendants on a nonsegregated basis.

It Is, Therefore, Ordered, Adjudged and Decreed:—

(1) Plaintiffs' application for a permanent injunction as prayed for in the complaint is denied.

(2) Said plan of defendants, hereinabove set out, be, and the same is hereby, approved.

(3) Defendants give further study to a proper plan for integration of the playgrounds and community centers operated by the Park Commission and prepare and submit to the Court within six (6) months from June 15, 1961 a plan and program for the integration of said facilities.

(4) Any adjudication with reference to Pink Palace Museum is hereby stayed; and defendants shall, within ninety (90) days, prepare and file appropriate action in the Chancery Court of Shelby County, Tennessee for a declaratory judgment to determine what effect integration of the races at said Museum will have upon the title of the City of Memphis to this property.

This cause is retained in Court for such further proceedings as may be necessary from time to time. Costs are adjudged equally between plaintiffs and defendants, for which execution may issue.

Both parties are expressly authorized to prepare and present to the Court, promptly, additional findings of fact [fol. 121] and conclusions of law, and such additional findings and conclusions, when approved by the Court, shall become a part of this Judgment.

.....

Judge.

APPROVED:.....Attorneys for Plaintiffs.

.....Attorneys for Defendants.

[fol. 122]

No. 14,662

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I. A. WATSON, JR., et al., Plaintiffs-Appellants,

vs.

CITY OF MEMPHIS, et al., Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Tennessee, Western Division

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DEFENDANTS' APPENDIX

J. S. Allen, Walter Chandler, Frank B. Gianotti, Jr., Thomas R. Prewitt, Memphis, Tennessee, Attorneys for Defendants-Appellees.

[fol. 123]

IN UNITED STATES DISTRICT COURT

OPINION OF TRIAL COURT

The Court: Gentlemen, we have had a full hearing today of all of the matters involved, and here briefly are the Court's views.

The plaintiffs, invoking the Court's injunctive powers, are asking in this proceeding that the defendants be enjoined forthwith from operating certain public facilities under the jurisdiction of the Park Commission of the City of Memphis, including golf courses, tennis courts, playgrounds, parks, and the Pink Palace Museum, upon a racially segregated basis.

Restrictions on a number of the facilities here involved, including the Brooks Memorial Art Gallery, the boat dock at McKellar Lake, and the zoo, were lifted some time ago.

At least twenty-one parks, I believe, are now open to general use without restriction.

Now, the defendants are voluntarily proposing in this proceeding to remove the restrictions with respect to the amusement facilities at the Fairgrounds, and all municipal golf courses, according to a plan which they claim is necessary to an orderly transition of its heretofore segregated system to one which will admit all comers without regard to race or color.

The defendants seem to have no objection to a removal of the restrictions with respect to the Pink Palace museum, but because of certain expressed conditions in the deed conveying this property to the city over thirty-five years ago, there is a risk which might result in a reverter [fol. 124] to the original grantor, or its successors. That is, in the event of the integration of that facility. With respect to this particular facility, the defendants are requesting of the Court at this time that the legal questions involved be left to the state courts for a ruling under the doctrine of abstention.

Now, the City of Memphis, through its Park Commission, carries on a very large and extensive operation in the City of Memphis. Its activities are many and varied. All things considered, the plan it proposes in this proceeding to take care of the Fairgrounds amusement facilities and the golf courses the Court is convinced is about as good as can be devised. In getting up this plan, many things necessarily had to be considered. The effective dates with respect to one or two of the golf courses are projected into the future to some extent, but the whole program under the plan, as the Court understands, may and will be accelerated in the light of new developments. The Court is well satisfied it is the purpose of the defendants to do this with all deliberate speed.

Of course, in passing upon this plan, local conditions to be encountered with respect to maintenance of law and order, the avoidance of violence and confusion in the community, revenues available from concessions, though not absolutely controlling, may, among many other things,

as practical matters be weighed and considered by the Court on application for an injunction of the type here sought. Time to organize the change-over to integration after all of these years is to the Court important. The legal rights of all citizens, white and colored, are not to be overlooked in what we do here today.

Apparently the defendants have given consideration to these matters. And they, as I say, are matters for the Court to consider on application for the injunctive relief sought.

[fol. 125] It is true no case dealing with a plan or program of integration of facilities as here involved is cited, but we do know that our Court of Appeals in Kelly against the Nashville Board of Education, cited by the defendants, approved a so-called stairstep plan for integrating the Nashville schools. The reasoning in that case seems to the Court to have application in this case. The problems here are somewhat comparable to the problems faced by the Nashville schools.

No valid objection to this plan in the Court's opinion is offered in this case. The plaintiffs merely say they want all of these facilities fully integrated now. Nothing else seems to matter.

The Court believes that good will and understanding between the races in this city can be best preserved and promoted by the plan here suggested by the defendants. The defendants, who are high minded public officials, have put much thought and effort into this plan. It is sound, fair, feasible and equitable. It is reasonable and within the spirit of the law, and the Court is convinced is proposed in utmost good faith. The Court approves it in all things.

It should be stated here that pending the transition period under the plan offered no citizen will be deprived of his right to play golf or to avail himself of other activities sponsored by the Memphis Park Commission.

With respect to the Pink Palace Museum, the Court thinks it wise that it stay any adjudication which might affect the title to this valuable property until the state courts can have an opportunity to decide the complex

questions involved. The doctrine of abstention in matters of this nature of course has been recognized by the courts, including the Supreme Court, many times.

The Court thinks the defendants, however, should take the initiative on this particular matter and get a suit [fol. 126] under the declaratory judgment act of Tennessee filed in the Shelby County Chancery Court. This should be done within ninety days. Incidentally, it occurs to the Court that additional parties will be necessary to a full adjudication of the matter. But this, of course, will be left for you lawyers to decide.

The John Rogers tennis courts on Jefferson Avenue in all probability will be abandoned as such at an early date before the year is out according to the proof, since the ground upon which they stand, presently owned by the City of Memphis, is too valuable for the purpose for which they are presently being used and plans are on foot to sell the property. The Court suggests to the defendants under their over-all plan that they consider opening up these particular facilities by January 1, 1962, on an integrated basis if the property has not been disposed of by the City or the tennis courts at that location are not abandoned.

Now, no plan is offered in this proceeding concerning the integration of other recreational facilities of the Park Commission. That is, the playgrounds and community centers. The proof is that integration of the races and utilization of these facilities is a matter which in the interest of all the citizens of Memphis calls for more study. The defendants are not prepared to offer a plan to cover this highly important phase of the Park Commission's activities at this time. The Superintendent of this department has been asked by the Park Commission to get up a plan which will accomplish this objective. The proof is that a target date for such integration of the races in the use of these particular facilities cannot be set at this time. As the Court understands, additional time is necessary for additional study and planning for an orderly transition of these activities on an integrated basis.

The Court in the circumstances will not order through injunction at this time the immediate integration of these

[fol. 127] particular recreational facilities of the Memphis Park Commission. It would be unwise for the Court to do so for many reasons. Additional time in the Court's opinion is of the essence. It is absolutely necessary for a full consideration of this troublesome matter by the defendants so that adequate plans for the transition may be devised and agreed upon.

The Court will hold this case open so that these particular matters can be given further study and consideration by the Board of Park Commissioners. The proof is that something in the way of a plan could be ready for submission to the Court in approximately one to two years. The Court in the circumstances does invite the Department to submit such a plan in this proceeding, but thinks this should be done within a period of six months.

Since the defendants have been acting for some time on a voluntary basis and have desegrated a number of its facilities, and are in perfect good faith proceeding in an orderly and effective manner to complete the whole job with respect to those remaining which are here involved, the Court rules that an injunction is unnecessary.

So, gentlemen, get up a judgment right away approving the plan submitted with respect to the Fairgrounds and the golf courses and sustaining the defendants' request for stay with respect to the Pink Palace Museum, so that the state courts may pass upon the questions there involved.

The judgment should also provide for the filing of a plan with respect to the playgrounds and community centers within six months.

The costs in this proceeding will be equally divided between the plaintiffs and defendants.

Now, the Court in these remarks has only hit the high spots. They will serve, at least temporarily, as the Court's [fol. 128] findings and conclusions under the rules. Others in more detail will probably be necessary, so the Court suggests you gentlemen who represent the defendants might within the next week get up additional ones to be filed with the Court. The Court will need an original and about five copies.

Counsel for the plaintiffs may if they desire also propose findings and conclusions to the Court.

All right, if there is nothing further, Mr. Clerk, adjourn court until tomorrow morning at nine-thirty.

[fol. 129]

IN UNITED STATES COURT OF APPEALS

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
March 28, 1962

Before: McAllister, and O'Sullivan, Circuit Judges, and Starr, District Judge.

This cause is argued by Derrick A. Bell, Jr., for plaintiffs-appellants and by Thomas R. Prewitt and Frank B. Gianotti, Jr. for defendants-appellees and is submitted to the court.

[fol. 130]

IN UNITED STATES COURT OF APPEALS

JUDGMENT—June 12, 1962

Appeal from the United States District Court for the Western District of Tennessee.

This Cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Tennessee, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

Thomas F. McAllister, United States Circuit Judge.

[fol. 131]

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 14662

I. A. WATSON, JR., et al., Plaintiffs-Appellants,

v.

CITY OF MEMPHIS, et al., Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Tennessee, Western Division

OPINION—Decided June 12, 1962

Before: McAllister and O'Sullivan, Circuit Judges, and Starr, Senior District Judge.

McALLISTER, Circuit Judge. This is an appeal from a judgment of the district court denying a permanent injunction restraining the Memphis Park Commission and others from operating and maintaining certain public recreational facilities on a racially-segregated basis; approving a plan proposed by appellees for a gradual desegregation of certain of these facilities; and ordering the Memphis Park Commission to file, within a six-months' period, a further plan for the desegregation of all recreational facilities of the City.

In the complaint filed in this class action on behalf of appellees and others, it was alleged that the City of Memphis had denied certain of the appellants access to the Pine Hill Golf Course, the McKellar Lake Boat Dock, the Brooks Art Gallery, the John Rogers Tennis Court, and the Pink Palace Museum, solely because of the fact that they were Negroes. Prior to the hearing of this case in the district court, the City of Memphis had already desegregated the McKellar Lake Boat Dock and the Brooks Art Gallery; and the Pine Hill Golf Course had been desegregated prior [fol. 132] to the time of the argument of this appeal. At

the time of the hearing in the district court, the City of Memphis was undecided whether it would sell the John Rogers Tennis Court, because it was such valuable property. However, it has since been desegregated. As to the Pink Palace Museum, it was given to the City on the condition that it should be used only by white people, with a provision of reverter in the deed, in case of violation of this condition; and the district court ordered the City, within ninety days, to file suit in the courts of Tennessee for a declaratory judgment in order to secure a full adjudication of all matters that might affect the use, and reversion, and to determine what effect integration of the races at the Museum would have upon the title of the City of Memphis to the property.

It may be generally said, then, that the complaint of appellants as to the refusal of the City to permit them to use the parks specified in their allegation on the ground of racial discrimination has been remedied by the City through its action in desegregating the recreational facilities in question. However, appellants rest their claim on the other allegation of their complaint to the effect that the City of Memphis is violating their constitutional rights in maintaining and operating all of its other parks, playgrounds, and recreational facilities upon a racially-segregated basis. It was in regard to these facilities that the district court issued an order requiring the City to submit, within a six-months' period, a plan for the total desegregation of all of its recreational facilities.

Appellants' contention is that the law permits of no delays on the part of the City of Memphis in effecting the desegregation of all its parks and recreational facilities, and that the district court was in error in not ordering all of the parks and recreational facilities of the City of Memphis to be immediately desegregated. Specifically, appellants claim that the district court committed reversible error "in holding that the decision in *Brown* v. *Board of Education*, 349 U. S. 294, which contemplates allowing a delay in the desegregation of public elementary and secondary schools, where certain conditions exist, is applicable in any action involving public recreational facilities." As contended by appellants, "logic as well as law requires lim-

iting approval of delay to litigation involving public elementary and secondary schools, for attendance in such [fol. 133] schools is compulsory almost everywhere whereas no one is compelled to utilize public recreational facilities."

The background of the case is as follows: The City of Memphis has a population of approximately 500,000 people, of whom 63% are white, and 37% are Negro. Approximately 100,000 children participate in one or more of the recreational activities sponsored by the Memphis Park Commission and carried on through its Recreational Department. This is a remarkable civic achievement on the part of the City of Memphis and its citizens. Of the 100,000 children participating, approximately 65,000 are white, and 35,000 are Negro. The Department sponsors many and varied types of recreational activities, including, but not limited to, competitive sports, such as baseball and basketball, as well as dancing and similar activities. The Recreational Department headquarters is itself operated on an integrated basis. All Negro Supervisors and Directors are paid on the same salary schedule as the white Supervisors and Directors; and the qualifications of white and Negro Supervisors and Directors are the same. The Recreational Department of the Memphis Park Commission is rated by competent authorities as the best in the South; and its recreational program for Negroes as the finest in the country.

Upon the trial, it appeared that the City of Memphis, through its Park Commission, operates and maintains 131 parks and facilities, of which 108 are developed, and 23 are undeveloped, or "raw" land, that 25 of the developed facilities are restricted to Negroes; 25 are open to both races; and 58 are restricted to white persons; that the facilities operated on a racially-segregated basis include 40 neighborhood playgrounds for white persons, and 21 for Negroes; 8 white, and 4 Negro community centers; 5 white, and 3 Negro swimming pools; 5 white, and 2 Negro golf courses; and 2 "city-wide" white stadiums. It appears that, over the years of the past, it has been the policy of the Park Commission to designate parks and playgrounds as white or Negro, according to the racial character of the neighborhood. Pursuant to this policy, at the time of the

trial, the district court found that 6 facilities would be changed from white to Negro use in the near future and that, as a result, the ratio for community centers would be changed from 8 white and 4 Negro centers to, 1 integrated, 7 white, and 4 Negro centers; and for swimming [fol. 134] pools, the ratio would be changed from 5 white, and 5 Negro swimming pools, to 4 white, and 6 Negro swimming pools. It appeared on the trial that the Park Commission had recently removed all racial restrictions at 3 "city-wide" facilities, namely: Overton Park Zoo, the Art Gallery in Overton Park, and the McKellar Lake Boat Dock. In June, 1961, the Park Commission's plan, which was approved by the court in the instant case, proposed to desegregate Fairgrounds Amusement Park at the end of 1961. This park, at the time of the hearing of this appeal, had already been desegregated. The Park Commission's plan also proposed, beginning in January 1962, to desegregate all 7 public golf courses on a three-year schedule. Four golf courses had already been desegregated at the time of the hearing of this appeal.

From the testimony of the Director of Parks of the City of Memphis, it appeared that, as each park and facility was desegregated, more recreational directors and supervisors were necessary and were appointed, and more policemen were required to patrol the parks and playgrounds. As an instance, the opening of the zoo on a desegregated basis made it necessary to increase the police protection there. The Director of Parks further testified that if there were immediate desegregation of all parks and playgrounds, the City would be obliged to reduce the number of available playgrounds in order to give the children full protection, and that such action would result in a denial of recreational facilities to a great number of children, both white and Negro. The Director also testified that one of the chief purposes of the recreational program was to cut down on juvenile delinquency of all children, and that one of the objectives, in this regard, was to keep as many children as possible "off the streets," during the summer vacation period. This objective would obviously be frustrated if numerous playgrounds were closed.

The Superintendent of the Recreational Department of the Memphis Park Commission, with thirty-six years of experience in the field of public recreation, testified that if there were immediate and total integration of parks and playgrounds of Memphis, "many, many of the playgrounds would have to be closed down"; more supervisors would be needed; there would be much additional violence and confusion; and, in his opinion, the playground system would be ruined. He had previously studied the matter of de- [fol. 135] segregation of golf courses in a number of southern cities, including Atlanta, Nashville, Dallas, and New Orleans, where he had learned that there had been some trouble during the integration progress but no bloodshed or violence. However, he did state that with regard to the playgrounds in Memphis, they had been obliged, on occasion, to call the police because of rowdies and troublemakers, at the Negro parks, as well as at the white parks.

In explaining what he meant by "confusion," the Superintendent alluded to an experience which they had in Memphis where, because of the large numbers congregating for certain events, at "one of the closing exercises for Negroes at Lincoln Park, we had bloodshed, and shootings, and knifings, and it became necessary to break that down into separate closing exercises because of the trouble we had." This was an instance of what the Superintendent called "confusion" resulting from exercises participated in by great numbers of people at parks and playgrounds; and this "confusion" had nothing to do with desegregation, since all of those taking part in the exercises were Negroes. The difficulty obviously arose from a congregation of toughs, juvenile delinquents, and criminal elements, who, out of all proportion to their numbers, can cause trouble, violence, fighting, and bloodshed, among a great crowd of innocent people.

James C. Mcdonald, Chief of Police of the City of Memphis, who had been with the Police Department twenty-one years, stated that he had given several years of thought and consideration, since the decision in the *Brown* case, to the problems of desegregation in Memphis, from the standpoint on the preservation of law and order; that when trouble resulted from "sit ins" and desegregated seating

in busses, the Police Department, as soon as it received a call, would send three or four police cars "to get there as quickly as possible to keep down any violence." He further stated that he had been consulted by the Park Commission, that he thought its plan was good, and that since the *Brown* case was decided in 1954, a number of facilities in Memphis had been opened on a non-segregated basis, including libraries, the zoo, and other facilities. In the opinion of the Chief, the key to the solution of the problem was the timing—"where it would be on a gradual basis where the hot heads wouldn't have a chance to act. . . . [fol. 136] We will have a little idea of what is coming off and can lay our groundwork for it and hope to be able to handle the situation."

Chief Macdonald put it succinctly: "You have a few in any bunch that will agitate trouble. I have seen it a lot of times that a few will cause a lot of people to get in trouble." He stated that he thought they had been very fortunate with so-called agitators in Memphis as compared to other communities, and that they did not have the agitation in Memphis that there had been in other places. In his opinion, the police could not handle the situation if all the park facilities were integrated at one time.

Mr. Harry Pierotti, Chairman of the Memphis Park Commission, stated that the City of Memphis had been singularly blessed by the absence of turmoil on the race question up to the date of the hearing of this case, and that he felt it was one of the Park Commission's duties to all the people of Memphis, white and Negro, to keep it that way. He stated: "I am going to abide by the rules of this court or get off the Park Commission, because I want no instance here like they have had in other parts of the South. And I believe that we can live better as a people if you permit us to desegregate these things on a gradual basis. . . . Not only have I, but the other members of the Commission have, given this a long, hard look, and a lot of serious thought. This plan which we are evolving, and which we are asking the court to approve, is not one which was gotten up overnight. It was the result of a good many conferences with the members of my Commission and with

other people. . . . Among other people, we have conferred with the law-enforcing officials and have gotten their opinion in the matter." He further stated that, upon integrating any facility, it, of course, involves additional personnel to make the transition period a smooth one, and that the consideration of avoiding confusion and turmoil in the community was a very strong factor in their determination as to when and what facilities should be integrated. In addition to the avoidance of confusion and violence, the city officials also took into consideration the effect of immediate or gradual desegregation upon the question of revenue from concessions operated by others for the Commission, and by the Commission itself.

The concessions, for certain amusement devices, operated by individuals, are granted by the Commission for [fol. 137] rentals based upon gross receipts. The Commission felt that if it were to desegregate the Fairgrounds Amusement Park in the middle of the year, it would be unfair to such concessionaires and detrimental to the Commission. This amusement park was, however, to be desegregated six months after the hearing in the district court, or on January 1, 1962, and it has been desegregated since that date. The income from concessions, or similar operations, aggregated three quarters of a million dollars a year, or a third of the budget, and the Park Commission is obliged to earn this amount in order to operate the various facilities. If a large number of the facilities were closed down, the operating income would be seriously curtailed. Mr. Pierotti stated that one of the reasons for his favoring the plan of a more gradual desegregation, rather than immediate integration of all the parks and recreational facilities, was what he stated to be the rather peculiar situation and location of Memphis,—a city of a half a million people, with more than one-third of its population consisting of Negro citizens; with the State of Arkansas just across the river from Memphis; and the State of Mississippi, five miles south of the city limits of Memphis; where such surrounding area was predominantly Negro; and where those people from this surrounding area made use of the recreational facilities. He felt that since the taxes used to maintain these parks and recreational facilities were paid by the

citizens of Memphis, the predominance of a colored population, composed not only of Negro citizens in Memphis, but including many in the adjoining areas of Mississippi and Arkansas, who used the parks, would "promote" violence on the part of both Negroes and whites, in case of immediate desegregation of all of the parks, playgrounds and recreational facilities of the City of Memphis; and he based his opinion on his consultations with the park officials, the police officers, and his knowledge of the City and its people.

None of the evidence introduced on behalf of the City of Memphis is questioned. Whether the system of organized play in which these thousands of children take part, may be greatly curtailed or put in jeopardy by immediate desegregation of all the parks and playgrounds, is deemed irrelevant by appellants. The probable closing down of many of these facilities is considered equally irrelevant by appellants, as are any questions of orderly transition, police [fol. 138] protection, maintenance of the present friendly and peaceful relations between all of the white and colored citizens of Memphis.

The evidence before us shows that what the City of Memphis proposes is not a mere promise to do something, sometime in a remote or uncertain future. On the trial it submitted a plan for the desegregation for a number of the parks and recreational facilities of the City, of which a substantial part had already been carried out after the plan was prepared, and before the hearing in the district court. It was further shown that the City had also desegregated a further substantial number of recreational facilities, subsequent to the hearing in the district court, and before the arguments in this court on the present appeal; and, from the statements made during arguments on appeal by counsel for the City as to the plan and intention of the City, which apparently were not doubted by counsel for appellants, it would appear that a substantial part of a specified program of desegregation has been carried out since the arguments on appeal. We therefore have before us a program of desegregation that has been carried out, is being carried out at the present time, and will be carried

out in the future until all of the City's parks, playgrounds, and recreational facilities are desegregated.

The plan for the desegregation of all of the City's recreational facilities, which the district court ordered to be filed within a six-months' period after the hearing, is not, of course, in the record before us, nor has the district court had, as yet, the opportunity of approving it as a proper plan to effect the desegregation, with all deliberate speed, of all the parks, playgrounds, and recreational facilities of the City of Memphis. This plan, which, it appears, has been formulated, but which has not yet been filed with the district court, because of this intervening appeal, is not before us, therefore, for consideration.

The plan of the Memphis Park Commission, which was before the district court for integration of certain recreational facilities, provided for the desegregation of the Fairgrounds Amusement Park by the end of 1961; for the desegregation of three golf courses by March 1, 1962; for the desegregation of three more golf courses (one, used at present exclusively by Negroes) before March 1, 1963; and for the desegregation of the last of the seven municipal golf courses at the end of 1963. Moreover, in the plan, the [fol. 139] Memphis Park Commission stated that it proposed to accelerate this program where judged practicable.

The foregoing was the plan which the district court approved; the court also directed that the City should file a further plan for the integration of all of the parks, playgrounds, and recreational facilities within a period of six months from the date of its judgment; and the court expressly retained jurisdiction of the case for such further proceedings as might be necessary from time to time.

Appellants made no specified objections to the plan which the district court approved. As the court stated in its opinion:

> "No valid objection to this plan in the Court's opinion is offered in this case. The plaintiffs merely say they want all of these facilities fully integrated now. Nothing else seems to matter."

This court is not in a position, at the present time, to adjudicate concerning the preliminary plan which the district court approved at the hearing. No objection has been made to any of its terms. The only complaint before us is that all of the parks, playgrounds, and recreational facilities of the City of Memphis were not immediately desegregated by order of the district court. As to the preliminary plan approved by the court, we know that four of the seven municipal golf courses are presently available to colored people, as well as the principal amusement park. There may be others. There may have been an acceleration of the program; but appellants, as far as this case goes, are not interested in that question. Their claim is that no delay whatever is permissible; and that the allowance of any delay in the total desegregation of all Memphis recreational facilities deprives them of their constitutional rights.

As to the plan which the district court directed appellees to file, there is no objection to the approval of such plan, as it has not yet been filed, and the district court, necessarily, has been unable either to approve or disapprove such plan before the appeal was taken to this court.

We return, then, to the sole issue in the case raised by appellants: that the law permits of no delay on the part of the City of Memphis in effecting the desegregation of all of its parks and recreational facilities; that the district court was in error in not ordering all of the parks and [fol. 140] recreational facilities to be immediately desegregated; and that the decision in *Brown* v. *Board of Education*, 349 U. S. 294, is inapplicable to a case involving public recreational facilities.

We are of the view that the principle stated in *Brown* v. *Board of Education*, *supra*, relating to the desegregation of schools, is applicable to the present case, involving the desegregation of recreational facilities of the City of Memphis. In our opinion the *Brown* decision is not limited to cases involving public schools, as is here contended by appellants. *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180, 184, 195 (CA 6); see also *Cummings* v. *City of Charleston*, 288 F. 2d 817 (CA 4).

In its findings of fact and conclusions of law, the district court said:

"Full implementation of the constitutional principles as announced in the *Brown Case* requires solution of varied local problems. Local authorities, and in this case the responsible Park Commission officials, have the primary responsibility of elucidating, assessing and solving these problems. The District Courts have the obligation of determining whether the action of local authorities constitutes good faith implementation of the governing constitutional principles; and in fashioning and effectuating decrees, the Court is guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."

"In determining whether defendants are acting in good faith in recognizing the constitutional rights of Negro citizens to make use of the Park Commission facilities on a nonsegregated basis, it is proper for the Court to consider (1) local conditions and local problems as to facilities, and teacher or supervisory personnel, as well as local problems of maintaining, during the transition period, maximum recreational facilities for all citizens, White and Negro; (2) importance of time to accomplish change-over from a partially segregated system to an integrated one; (3) good will and understanding heretofore obtaining between the races, and (4) avoidance of confusion and turmoil and maintenance of law and order in the community during the transition period."

[fol. 141] "Defendants have shown by a preponderance of the evidence that additional time is necessary to accomplish full desegregation of all facilities operated by the Memphis Park Commission, and defendants have further shown that their plan and program for gradual desegregation is necessary, in the public interest, and is consistent with good faith implementation of the governing constitutional principles as announced in *Brown* vs. *Board of Education, supra*, taking into account all of the local conditions and problems hereinabove set out; and the Court has concluded, in the exercise of its discretion, that the prayer for the

declaratory judgment and injunctive relief should be denied."

Considering the great number of parks, playgrounds, and recreational facilities maintained by the City of Memphis; the remarkably large number of children—65,000 white children and 35,000 Negro children—participating in the program under the guidance of trained supervisors and directors of planned recreation; the circumstances showing a substantial desegregation of many of the City's recreational facilities, prior to the hearing in the district court, and a continuing program of desegregation since that time; the evidence that immediate desegregation of all of the City's parks, playgrounds, and recreational facilities would result in great damage to the organized system of play for many children, and the probable closing of a number of recreational facilities, due to the necessity of providing considerable additional police protection and park supervision; the past and present success of the continuing plan of desegregation now being peacefully and harmoniously carried out by the City; the unquestioned good faith of the officials of the City and Park Commission in attempting to comply, in the field of recreation, with the opinion of the Supreme Court in *Brown* v. *Board of Education*, both before the hearing of this case in the district court, and since that time; the requirement that the Park Commission file a plan for desegregation of the City's park and recreational system to be subject to the approval of the district court; the fact that this appeal was taken before the plan, ordered by the court, was filed, and that the district court has never had an opportunity to approve or disapprove such a plan—these considerations require a deter- [fol. 142] mination that, under the circumstances of this case, there was a proper exercise of discretion by the district court in denying injunctive relief, in providing for a plan of desegregation to be filed by the Park Commission with the court, and in reserving jurisdiction for further proceedings in the case; and in accordance with the foregoing, the judgment of the district court is affirmed on the findings of fact and conclusions of law of Judge Boyd.

[fol. 143] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 144]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—November 19, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1962

No. 424

I. A. WATSON, JR., T. W. NORTHCROSS, SR., W. D. SPEIGHT, JR., A. E. HORNE, SR., MELVIN MALUNDA, JOHNNY GHOLSTON, HAROLD GHOLSTON, ALFRED HAYNES, JR., JOHN ROGERS, THOMAS PUGH and CURTIS KING, on behalf of themselves and others similarly situated,

Petitioners,

—v.—

CITY OF MEMPHIS, a public body corporate, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JACK GREENBERG
CONSTANCE BAKER MOTLEY
DERRICK BELL
NORMAN AMAKER
10 Columbus Circle
New York 19, New York

A. W. WILLIS, JR.
588 Vance Avenue
Memphis, Tennessee

Attorneys for Petitioners

B. L. HOOKS
C. O. HORTON
B. F. JONES
H. T. LOCKARD
R. B. SUGARMON, JR.
Memphis, Tennessee

Of Counsel

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IN THE

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I. A. WATSON, JR., T. W. NORTHCROSS, SR., W. D. SPEIGHT, JR., A. E. HORNE, SR., MELVIN MALUNDA, JOHNNY GHOLSTON, HAROLD GHOLSTON, ALFRED HAYNES, JR., JOHN ROGERS, THOMAS PUGH and CURTIS KING, on behalf of themselves and others similarly situated,

Petitioners,

—v.—

CITY OF MEMPHIS, a public body corporate, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners in the above entitled cause pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on June 12, 1962.

Citation to Opinions Below

The District Court did not render an opinion. Its judgment was filed on June 20, 1961 and appears in the certified record at p. 118a, *et seq.* Its formal Findings of Fact and Conclusions of Law were filed on June 27, 1961 and appear

in the record at p. 105a.* The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 303 F. 2d 863. It is appended hereto at p. 11.

Jurisdiction

The opinion and judgment of the Court of Appeals was rendered on June 12, 1962 (App. 11). The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1254(1).

Question Presented

Whether the courts below erred in holding that principles stated in *Brown* v. *Board of Education*, 349 U. S. 294, which allow delay in desegregating public schools, apply to this case which involves desegregating public recreational facilities.

Constitutional Provision Involved

This case involves Section One of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

On May 13, 1960, petitioners for themselves and other Negro citizens residing in Memphis, filed suit in the United States District Court for the Western District of Tennessee, Western Division, for a declaratory judgment and permanent injunction restraining the Memphis Park Commission and others from operating public recreational facilities

* Petitioners in addition to the certified record, have filed nine copies of the record as printed for the use of the court below pursuant to Rule 21(4) of the Rules of this Court.

on a racially segregated basis. Jurisdiction was based on 28 U. S. C. §1343(c), 28 U. S. C. §§2201, 2202 and 42 U. S. C. §§1981, 1983.

In substance they complained that defendants maintained some facilities exclusively for white and others exclusively for Negro citizens. Petitioners further alleged that they and other members of the class attempted to use facilities restricted to white persons and were barred or arrested on account of race or color contrary to the equal protection clause of the Fourteenth Amendment and 42 U. S. C. §1981 (R. 2a-9a).

July 1, 1960 defendants answered (R. 10a-14a). The answer did not deny operating segregated recreational facilities. Rather, defendants asserted in justification: that facilities for Negroes were equal to those for whites; that Memphis provided a system of neighborhood parks designated for whites or Negroes according to the racial makeup of the area and that "[i]n other than residential areas, the parks are used generally by all the citizens of Memphis" (R. 11a);[1] that certain lands upon which recreational facilities were situated were acquired under restrictive conditions relating to use solely by white persons; that "problems" of the nature of "riots, violence, and disharmony" (R. 12a) would be the likely consequence of immediate court ordered desegregation of all facilities and, therefore, these defendants in discharge of their duties as public officers and in exercise of their police power felt it necessary to maintain the system as constituted; that a loss of revenue would

[1] Evidence, however, showed that the neighborhood policy is not uniformly adhered to in that in some previously white but now predominantly Negro neighborhoods, the parks or playgrounds were still maintained exclusively for whites (R. 89a-90a). Moreover, at least one city-wide facility, Crump Stadium, was still operated on a segregated basis (R. 91a).

result from a loss of attendance caused by fear of disorders; that the expense of operating the parks would be prohibitive because of the extra police protection required, since "the incidence of violence, vandalism and disorders among visitors to the parks of the City of Memphis is greatly increased in those parks frequented by Negro citizens of the City of Memphis" (R. 14a).

The cause came on for trial on June 14-15, 1961. The facts were established substantially as plaintiffs alleged: The City of Memphis, through its Park Commission, operated and maintained a public recreational system of 131 parks and facilities on a racially segregated basis. Of these 131, 108 were "developed," 25 were "undeveloped" (i.e., on raw land); 25 of the developed facilities were restricted to use by whites (R. 44a, 46a, 77a, 80a). Forty "neighborhood" playgrounds were restricted to white persons, 21 to Negroes, 8 community centers were restricted to whites and 4 to Negroes, and there were 5 white and 2 Negro golf courses and 2 "city-wide" white stadiums (R. 73a-74a, 80a, 81a).[2] Negroes who attempted to use "white" facilities were denied admission and in some cases were arrested if they refused to leave when ordered (R. 22a, 88a-89a).

The Park Commission's policy was to open up parks from time to time for all citizens (R. 46a). It had recently removed racial restrictions at three "city-wide" facilities as part of its gradual desegregation plan (R. 47a)[3] and other facilities throughout the city were scheduled to be

[2] In addition, the Park Commission operates 56 playgrounds and facilities on property owned by various churches; 30 designated as "white," the rest restricted to Negroes (R. 80a-81a).

[3] At at least one of these facilities, however, racial bars had not been completely removed; the toilet facilities at Overton Park Zoo were still segregated at the time of trial (R. 96a). Testimony also revealed that at one of the older "integrated" facilities, Court Square, there were toilets for whites only (R. 86a).

desegregated on a gradual basis in accordance with that plan (R. 47a-50a). Commission officials and the local chief of police testified that, in their opinion, any desegregation in public recreational facilities taking place in any manner other than that proposed by the Commission's gradual plan would produce turmoil, confusion, and perhaps bloodshed in the City of Memphis (R. 49a, 55a, 62a, 101a-103a), although there had not been any violence in the past due to the integration of facilities nor had any "agitators" appeared (R. 64a, 95a-96a, 103a). The belief that immediate integration of all facilities would lead to violence was based only on anonymous letters and phone calls that were received when facilities had been integrated in the past (R. 62a). They further testified that Memphis having been "singularly blessed by the absence of turmoil up to this time," the Park Commission, "consistent with good relations," desired to make all City-wide facilities available to Negroes "with all deliberate speed" (R. 50a).

There was evidence relating to an art gallery and museum known as the "Pink Palace" in support of defendants' assertion that certain lands upon which public recreational facilities had been built had been acquired pursuant to deeds containing racially restrictive covenants; it was urged, therefore, that complete integration should await construction of this deed by the Tennessee courts (R. 39a-43a).[4]

On June 20, 1961 the District Court, the Honorable Marion Boyd, entered judgment denying petitioners' application for permanent injunction as prayed in the complaint, approving the Park Commission's gradual plan (R. 118a-119a), requiring defendants to submit a further plan with respect to integration of playgrounds and community

[4] However, the Pink Palace Museum has been opened for Negro use one day per week (R. 59a) without objection from the corporate grantor or its successors (R. 58a-60a).

centers within a period of six months,[5] and staying decision with reference to the Pink Palace Museum until the Chancery Court of Shelby County, Tennessee had opportunity to determine the effect of integration of the races upon the title of the City of Memphis to this property (R. 118a-121a). The Court in its Findings of Fact and Conclusions of Law (R. 105a-117a) found that because of the local conditions in Memphis, additional time was needed to accomplish full desegregation of the public recreational facilities and that the gradual plan was in the public interest and was "consistent with good faith implementation of the governing constitutional principles as announced in *Brown* v. *Board of Education* [349 U. S. 294 (1955)]" (R. 117a).

Petitioners on July 7, 1961 appealed to the United States Court of Appeals for the Sixth Circuit. On June 12, 1962 that Court affirmed the judgment of the District Court on the Findings of Fact and Conclusions of Law of the District Judge. The Court of Appeals stated that the sole issue tendered by petitioners on their appeal was whether the allowance of any delay in total desegregation of all Memphis recreational facilities deprived them of their constitutional rights, i.e., whether the decision in the second *Brown* case applied to public recreational facilities as well as to public schools. In deciding this issue, the Court said:

> We are of the view that the principle stated in *Brown* v. *Board of Education, supra,* relating to the desegregation of schools, is applicable to the present case, involving the desegregation of recreational facilities of the City of Memphis. In our opinion the *Brown* decision is not limited to cases involving public schools, as is here contended by appellants. *Detroit Housing Com-*

[5] Under the provisions of this plan which was submitted on oral argument in the Court of Appeals at that Court's request, complete integration of all facilities would not occur until 1971. The plan, however, was not made part of the record.

mission v. *Lewis*, 226 F. 2d 180, 194, 185 (CA 6); see also *Cummings* v. *City of Charleston*, 288 F. 2d 817 (CA 4) (App. p. 22).

REASONS FOR GRANTING THE WRIT

The Decision Below Conflicts With Prior Decisions of This Court Declaring Constitutional Rights to Be Personal and Present; the Delay Contemplated by the *School Segregation Cases* Is Not Applicable Here.

Previous decisions of this Court have stressed the present nature of constitutional rights. In *Sweatt* v. *Painter*, 339 U. S. 629, 635, this Court said, "[i]t is fundamental that these cases concern rights which are *personal and present*" (emphasis added). In *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, a case involving the admission of a Negro to a state-supported institution of higher education, this Court declared: "[w]e concluded that the conditions under which this appellant is required to receive his education deprives him of his *personal* and *present* right to the equal protection of the laws," at p. 642 (emphasis added). See, also, *Sipuel* v. *Board of Regents of University of Oklahoma*, 332 U. S. 631, 632-33:

> The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it *as soon as it does for applicants of any other group. Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, 83 L. ed. 208, 59 S. Ct. 232 (1938) emphasis added).

Notwithstanding this undeviating line of authority, the Court below in reliance on *Brown* v. *Board of Education*, 349 U. S. 294, sanctioned delay here. But shortly following the second *Brown* decision this Court made clear that it did not apply outside the area of elementary and high school education. *Florida ex rel. Hawkins* v. *Board of Control*, 350 U. S. 413 (1956). By extending *Brown* beyond the area indicated as permissible by this Court, the Court of Appeals ignored the reasons for that ruling.

Because of the complexity of the issues involved, the need to completely overhaul the public educational systems of numerous states, and because attendance at such public schools was compulsory and involved very large numbers of people, it was deemed a proper exercise of equitable jurisdiction to allow for some delay in the implementation of the rights that had been declared. Hence, the *Brown* decision was determined by the special problems with which it dealt. The Court made it quite clear that it was concerned with the "solution of varied local *school* problems" which would arise because of its decision. 349 U. S. 299 (emphasis added). Declaring that, "[a]t stake is the *personal* interest of the plaintiffs in admission to public schools *as soon as practicable* on a nondiscriminatory basis," 349 U. S. 300 (emphasis added), the Court pointed out with extreme care that delay was attributable to problems relating to school administration. Even as to this, the Court recognized only five such problems.[6]

Florida ex rel. Hawkins v. *Board of Control, supra,* underscored the limited reach of the second *Brown* opinion. This

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[6] 1) The physical condition of the school plant; 2) the school transportation system; 3) personnel; 4) revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis; 5) revision of local laws and regulations where necessary. 349 U. S. 300-301.

Court's remand of a suit by a Negro seeking admission to graduate school for reconsideration in light of *Brown* v. *Board of Education*, 347 U. S. 483 (1954) "did not imply that decrees involving graduate study present the problems of public elementary and secondary schools." "Thus," the Court continued, "our second decision in the Brown case . . . had no application to a case involving a Negro applying for admission to a state law school." 350 U. S. 413. The problems involved in the desegregation of public recreational facilities, even further removed from lower school education and obviously less complex, do not compel a different conclusion.

Moreover, the cases cited below in support of the judgment do not justify making an exception to the settled rule of this Court. *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180 (1955), another Sixth Circuit case, upheld a District Court order to integrate forthwith public housing units, but held that the order contemplated only a gradual not immediate change in occupancy. Yet, the order of the District Court did require defendants to cease *immediately* the use of separate waiting lists for housing applicants. Obviously, as a practical matter, nonsegregated *occupancy* could not be accomplished immediately. And in *Cummings* v. *City of Charleston*, 288 F. 2d 817 (4th Cir. 1961), the only delay approved was that agreed upon by the parties. Any further delay was struck down.

Moreover, the justification proposed in support of delay here was avoidance of racial conflict (R. 49a, 55a, 62a, 101a-103a). But wherever this claim has been urged, this Court has rejected it. *Buchanan* v. *Warley*, 245 U. S. 60, 81 (1917); *Cooper* v. *Aaron*, 358 U. S. 1, 16.

The court below decided the case contrary to the holdings of this Court in another respect in affirming that part of the District Court's judgment which stayed adjudication

with respect to the Pink Palace Museum and allowed defendants to have determined in the courts of Tennessee the effect of integration on the City's title to the property. A finding by the Tennessee courts that racial integration would cause reversion to the grantor would not relieve the District Court of its duty under the Fourteenth Amendment since the City of Memphis cannot give scope to a racially restrictive grant in its operation of the museum. See *Pennsylvania* v. *Board of City Trusts of Philadelphia*, 353 U. S. 230 (1957).

CONCLUSION

WHEREFORE, for the foregoing reasons petitioners respectfully request that the petition for certiorari be granted.

Respectfully submitted,

JACK GREENBERG
CONSTANCE BAKER MOTLEY
DERRICK BELL
NORMAN AMAKER
10 Columbus Circle
New York 19, New York

A. W. WILLIS, JR.
588 Vance Avenue
Memphis, Tennessee

Attorneys for Petitioners

B. L. HOOKS
C. O. HORTON
B. F. JONES
H. T. LOCKARD
R. B. SUGARMON, JR.
Memphis, Tennessee
Of Counsel

APPENDIX

Opinion of United States Court of Appeals For the Sixth Circuit

No. 14662

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I. A. WATSON, JR., *et al.*,

Plaintiffs-Appellants,

—v.—

CITY OF MEMPHIS, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

Decided June 12, 1962.

Before:

McALLISTER and O'SULLIVAN, *Circuit Judges,* and STARR, *Senior District Judge.*

McALLISTER, *Circuit Judge.* This is an appeal from a judgment of the district court denying a permanent injunction restraining the Memphis Park Commission and others from operating and maintaining certain public recreational facilities on a racially-segregated basis; approving a plan proposed by appellees for a gradual desegregation of cer-

tain of these facilities; and ordering the Memphis Park Commission to file, within a six-months' period, a further plan for the desegregation of all recreational facilities of the City.

In the complaint filed in this class action on behalf of appellees and others, it was alleged that the City of Memphis had denied certain of the appellants access to the Pine Hill Golf Course, the McKellar Lake Boat Dock, the Brooks Art Gallery, the John Rogers Tennis Court, and the Pink Palace Museum, solely because of the fact that they were Negroes. Prior to the hearing of this case in the district court, the City of Memphis had already desegregated the McKellar Lake Boat Dock and the Brooks Art Gallery; and the Pine Hill Golf Course had been desegregated prior to the time of the argument of this appeal. At the time of the hearing in the district court, the City of Memphis was undecided whether it would sell the John Rogers Tennis Court, because it was such valuable property. However, it has since been desegregated. As to the Pink Palace Museum, it was given to the City on the condition that it should be used only by white people, with a provision of reverter in the deed, in case of violation of this condition; and the district court ordered the City, within ninety days, to file suit in the courts of Tennessee for a declaratory judgment in order to secure a full adjudication of all matters that might affect the use, and reversion, and to determine what effect integration of the races at the Museum would have upon the title of the City of Memphis to the property.

It may be generally said, then, that the complaint of appellants as to the refusal of the City to permit them to use the parks specified in their allegation on the ground of racial discrimination has been remedied by the City through its action in desegregating the recreational facilities in question. However, appellants rest their claim on the other allegation of their complaint to the effect that

the City of Memphis is violating their constitutional rights in maintaining and operating all of its other parks, playgrounds, and recreational facilities upon a racially-segregated basis. It was in regard to these facilities that the district court issued an order requiring the City to submit, within a six-months' period, a plan for the total desegregation of all of its recreational facilities.

Appellants' contention is that the law permits of no delays on the part of the City of Memphis in effecting the desegregation of all its parks and recreational facilities, and that the district court was in error in not ordering all of the parks and recreational facilities of the City of Memphis to be immediately desegregated. Specifically, appellants claim that the district court committed reversible error "in holding that the decision in *Brown* v. *Board of Education*, 349 U. S. 294, which contemplates allowing a delay in the desegregation of public elementary and secondary schools, where certain conditions exist, is applicable in any action involving public recreational facilities." As contended by appellants, "logic as well as law requires limiting approval of delay to litigation involving public elementary and secondary schools, for attendance in such schools is compulsory almost everywhere whereas no one is compelled to utilize public recreational facilities."

The background of the case is as follows: The City of Memphis has a population of approximately 500,000 people, of whom 63% are white, and 37% are Negro. Approximately 100,000 children participate in one or more of the recreational activities sponsored by the Memphis Park Commission and carried on through its Recreational Department. This is a remarkable civic achievement on the part of the City of Memphis and its citizens. Of the 100,000 children participating, approximately 65,000 are white, and 35,000 are Negro. The Department sponsors many and varied types of recreational activities, including,

but not limited to, competitive sports, such as baseball and basketball, as well as dancing and similar activities. The Recreational Department headquarters is itself operated on an integrated basis. All Negro Supervisors and Directors are paid on the same salary schedule as the white Supervisors and Directors; and the qualifications of white and Negro Supervisors and Directors are the same. The Recreational Department of the Memphis Park Commission is rated by competent authorities as the best in the South; and its recreational program for Negroes as the finest in the country.

Upon the trial, it appeared that the City of Memphis, through its Park Commission, operates and maintains 131 parks and facilities, of which 108 are developed, and 23 are undeveloped, or "raw" land, that 25 of the developed facilities are restricted to Negroes; 25 are open to both races; and 58 are restricted to white persons; that the facilities operated on a racially-segregated basis include 40 neighborhood playgrounds for white persons, and 21 for Negroes; 8 white, and 4 Negro community centers; 5 white, and 5 Negro swimming pools; 5 white, and 2 Negro golf courses; and 2 "city-wide" white stadiums. It appears that, over the years of the past, it has been the policy of the Park Commission to designate parks and playgrounds as white or Negro, according to the racial character of the neighborhood. Pursuant to this policy, at the time of the trial, the district court found that 6 facilities would be changed from white to Negro use in the near future and that, as a result, the ratio for community centers would be changed from 8 white and 4 Negro centers to, 1 integrated, 7 white, and 4 Negro centers; and for swimming pools, the ratio would be changed from 5 white, and 5 Negro swimming pools, to 4 white, and 6 Negro swimming pools. It appeared on the trial that the Park Commission had recently removed all racial restrictions at 3 "city-wide"

facilities, namely: Overton Park Zoo, the Art Gallery in Overton Park, and the McKellar Lake Boat Dock. In June, 1961, the Park Commission's plan, which was approved by the court in the instant case, proposed to desegregate Fairgrounds Amusement Park at the end of 1961. This park, at the time of the hearing of this appeal, had already been desegregated. The Park Commission's plan also proposed, beginning in January 1962, to desegregate all 7 public golf courses on a three-year schedule. Four golf courses had already been desegregated at the time of the hearing of this appeal.

From the testimony of the Director of Parks of the City of Memphis, it appeared that, as each park and facility was desegregated, more recreational directors and supervisors were necessary and were appointed, and more policemen were required to patrol the parks and playgrounds. As an instance, the opening of the zoo on a desegregated basis made it necessary to increase the police protection there. The Director of Parks further testified that if there were immediate desegregation of all parks and playgrounds, the City would be obliged to reduce the number of available playgrounds in order to give the children full protection, and that such action would result in a denial of recreational facilities to a great number of children, both white and Negro. The Director also testified that one of the chief purposes of the recreational program was to cut down on juvenile delinquency of all children; and that one of the objectives, in this regard, was to keep as many children as possible "off the streets," during the summer vacation period. This objective would obviously be frustrated if numerous playgrounds were closed.

The Superintendent of the Recreational Department of the Memphis Park Commission, with thirty six years of experience in the field of public recreation, testified that if there were immediate and total integration of parks and

playgrounds of Memphis, "many, many of the playgrounds would have to be closed down"; more supervisors would be needed; there would be much additional violence and confusion; and, in his opinion, the playground system would be ruined. He had previously studied the matter of desegregation of golf courses in a number of southern cities, including Atlanta, Nashville, Dallas, and New Orleans, where he had learned that there had been some trouble during the integration progress but no bloodshed or violence. However, he did state that with regard to the playgrounds in Memphis, they had been obliged, on occasion, to call the police because of rowdies and trouble-makers, at the Negro parks, as well as at the white parks.

In explaining what he meant by "confusion," the Superintendent alluded to an experience which they had in Memphis where, because of the large numbers congregating for certain events, at "one of the closing exercises for Negroes at Lincoln Park, we had bloodshed, and shootings, and knifings, and it became necessary to break that down into separate closing exercises because of the trouble we had." This was an instance of what the Superintendent called "confusion" resulting from exercises participated in by great numbers of people at parks and playgrounds; and this "confusion" had nothing to do with desegregation, since all of those taking part in the exercises were Negroes. The difficulty obviously arose from a congregation of toughs, juvenile delinquents, and criminal elements, who, out of all proportion to their numbers, can cause trouble, violence, fighting, and bloodshed, among a great crowd of innocent people.

James C. Medonald, Chief of Police of the City of Memphis, who had been with the Police Department twenty-one years, stated that he had given several years of thought and consideration, since the decision in the *Brown* case, to the problems of desegregation in Memphis, from the stand-

point on the preservation of law and order; that when trouble resulted from "sit ins" and desegregated seating in busses, the Police Department, as soon as it received a call, would send three or four police cars "to get there as quickly as possible to keep down any violence." He further stated that he had been consulted by the Park Commission, that he thought its plan was good, and that since the *Brown* case was decided in 1954, a number of facilities in Memphis had been opened on a non-segregated basis, including libraries, the zoo, and other facilities. In the opinion of the Chief, the key to the solution of the problem was the timing—"where it would be on a gradual basis where the hot heads wouldn't have a chance to act. . . . We will have a little idea of what is coming off and can lay our groundwork for it and hope to be able to handle the situation."

Chief Macdonald put it succinctly: "You have a few in any bunch that will agitate trouble. I have seen it a lot of times that a few will cause a lot of people to get in trouble." He stated that he thought they had been very fortunate with so-called agitators in Memphis as compared to other communities, and that they did not have the agitation in Memphis that there had been in other places. In his opinion, the police could not handle the situation if all the park facilities were integrated at one time.

Mr. Harry Pierotti, Chairman of the Memphis Park Commission, stated that the City of Memphis had been singularly blessed by the absence of turmoil on the race question up to the date of the hearing of this case, and that he felt it was one of the Park Commission's duties to all the people of Memphis, white and Negro, to keep it that way. He stated: "I am going to abide by the rules of this court or get off the Park Commission, because I want no instance here like they have had in other parts of the South. And I believe that we can live better as a people

if you permit us to desegregate these things on a gradual basis. . . . Not only have I, but the other members of the Commission have, given this a long, hard look, and a lot of serious thought. This plan which we are evolving, and which we are asking the court to approve, is not one which was gotten up overnight. It was the result of a good many conferences with the members of my Commission and with other people. . . . Among other people, we have conferred with the law-enforcing officials and have gotten their opinion in the matter." He further stated that, upon integrating any facility, it, of course, involves additional personnel to make the transition period a smooth one, and that the consideration of avoiding confusion and turmoil in the community was a very strong factor in their determination as to when and what facilities should be integrated. In addition to the avoidance of confusion and violence, the city officials also took into consideration the effect of immediate or gradual desegregation upon the question of revenue from concessions operated by others for the Commission, and by the Commission itself.

The concessions, for certain amusement devices, operated by individuals, are granted by the Commission for rentals based upon gross receipts. The Commission felt that if it were to desegregate the Fairgrounds Amusement Park in the middle of the year, it would be unfair to such concessionaires and detrimental to the Commission. This amusement park was, however, to be desegregated six months after the hearing in the district court, or on January 1, 1962, and it has been desegregated since that date. The income from concessions, or similar operations, aggregated three quarters of a million dollars a year, or a third of the budget, and the Park Commission is obliged to earn this amount in order to operate the various facilities. If a large number of the facilities were closed down, the operating income would be seriously curtailed. Mr. Pierotti

stated that one of the reasons for his favoring the plan of a more gradual desegregation, rather than immediate integration of all the parks and recreational facilities, was that he stated to be the rather peculiar situation and location of Memphis,—a city of a half a million people, with more than one-third of its population consisting of Negro citizens; with the State of Arkansas just across the river from Memphis; and the State of Mississippi, five miles south of the city limits of Memphis; where such surrounding area was predominantly Negro; and where those people from this surrounding area made use of the recreational facilities. He felt that since the taxes used to maintain these parks and recreational facilities were paid by the citizens of Memphis, the predominance of a colored population, composed not only of Negro citizens in Memphis, but including many in the adjoining areas of Mississippi and Arkansas, who used the parks, would "promote" violence on the part of both Negroes and whites, in case of immediate desegregation of all of the parks, playgrounds and recreational facilities of the City of Memphis; and he based his opinion on his consultations with the park officials, the police officers, and his knowledge of the City and its people.

None of the evidence introduced on behalf of the City of Memphis is questioned. Whether the system of organized play in which these thousands of children take part, may be greatly curtailed or put in jeopardy by immediate desegregation of all the parks and playgrounds, is deemed irrelevant by appellants. The probable closing down of many of these facilities is considered equally irrelevant by appellants, as are any questions of orderly transition, police protection, maintenance of the present friendly and peaceful relations between all of the white and colored citizens of Memphis.

The evidence before us shows that what the City of Memphis proposes is not a mere promise to do something, sometime in a remote or uncertain future. On the trial it submitted a plan for the desegregation for a number of the parks and recreational facilities of the City, of which a substantial part had already been carried out after the plan was prepared, and before the hearing in the district court. It was further shown that the City had also desegregated a further substantial number of recreational facilities, subsequent to the hearing in the district court, and before the arguments in this court on the present appeal; and, from the statements made during arguments on appeal by counsel for the City as to the plan and intention of the City, which apparently were not doubted by counsel for appellants, it would appear that a substantial part of a specified program of desegregation has been carried out since the arguments on appeal. We therefore have before us a program of desegregation that has been carried out, is being carried out at the present time, and will be carried out in the future until all of the City's parks, playgrounds, and recreational facilities are desegregated.

The plan for the desegregation of all of the City's recreational facilities, which the district court ordered to be filed within a six-months' period after the hearing, is not, of course, in the record before us, nor has the district court had, as yet, the opportunity of approving it as a proper plan to effect the desegregation, with all deliberate speed, of all the parks, playgrounds, and recreational facilities of the City of Memphis. This plan, which, it appears, has been formulated, but which has not yet been filed with the district court, because of this intervening appeal, is not before us, therefore, for consideration.

The plan of the Memphis Park Commission, which was before the district court for integration of certain recrea-

tional facilities, provided for the desegregation of the Fairgrounds Amusement Park by the end of 1961; for the desegregation of three golf courses by March 1, 1962; for the desegregation of three more golf courses (one, used at present exclusively by Negroes) before March 1, 1963; and for the desegregation of the last of the seven municipal golf courses at the end of 1963. Moreover, in the plan, the Memphis Park Commission stated that it proposed to accelerate this program where judged practicable.

The foregoing was the plan which the district court approved; the court also directed that the City should file a further plan for the integration of all of the parks, playgrounds, and recreational facilities within a period of six months from the date of its judgment; and the court expressly retained jurisdiction of the case for such further proceedings as might be necessary from time to time.

Appellants made no specified objections to the plan which the district court approved. As the court stated in its opinion:

> "No valid objection to this plan in the Court's opinion is offered in this case. The plaintiffs merely say they want all of these facilities fully integrated now. Nothing else seems to matter."

This court is not in a position, at the present time, to adjudicate concerning the preliminary plan which the district court approved at the hearing. No objection has been made to any of its terms. The only complaint before us is that all of the parks, playgrounds, and recreational facilities of the City of Memphis were not immediately desegregated by order of the district court. As to the preliminary plan approved by the court, we know that four of the seven municipal golf courses are presently available to colored people, as well as the principal amusement park. There may be others. There may have been an acceleration

of the program; but appellants, as far as this case goes, are not interested in that question. Their claim is that no delay whatever is permissible; and that the allowance of any delay in the total desegregation of all Memphis recreational facilities deprives them of their constitutional rights.

As to the plan which the district court directed appellees to file, there is no objection to the approval of such plan, as it has not yet been filed, and the district court, necessarily, has been unable either to approve or disapprove such plan before the appeal was taken to this court.

We return, then, to the sole issue in the case raised by appellants: that the law permits of no delay on the part of the City of Memphis in effecting the desegregation of all of its parks and recreational facilities; that the district court was in error in not ordering all of the parks and recreational facilities to be immediately desegregated; and that the decision in *Brown* v. *Board of Education*, 349 U. S. 294, is inapplicable to a case involving public recreational facilities.

We are of the view that the principle stated in *Brown* v. *Board of Education*, *supra*, relating to the desegregation of schools, is applicable to the present case, involving the desegregation of recreational facilities of the City of Memphis. In our opinion the *Brown* decision is not limited to cases involving public schools, as is here contended by appellants. *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180, 184, 185 (CA 6); see also *Cummings* v. *City of Charleston*, 288 F. 2d 817 (CA 4).

In its findings of fact and conclusions of law, the district court said:

> "Full implementation of the constitutional principles as announced in the *Brown Case* requires solution of varied local problems. Local authorities, and in this case the responsible Park Commission officials, have

the primary responsibility of elucidating, assessing and solving these problems. The District Courts have the obligation of determining whether the action of local authorities constitutes good faith implementation of the governing constitutional principles; and in fashioning and effectuating decrees, the Court is guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."

"In determining whether defendants are acting in good faith in recognizing the constitutional rights of Negro citizens to make use of the Park Commission facilities on a nonsegregated basis, it is proper for the Court to consider (1) local conditions and local problems as to facilities, and teacher or supervisory personnel, as well as local problems of maintaining, during the transition period, maximum recreational facilities for all citizens, White and Negro; (2) importance of time to accomplish change-over from a partially segregated system to an integrated one; (3) good will and understanding heretofore obtaining between the races, and (4) avoidance of confusion and turmoil and maintenance of law and order in the community during the transition period."

"Defendants have shown by a preponderance of the evidence that addjtional time is necessary to accomplish full desegregation of all facilities operated by the Memphis Park Commission, and defendants have further shown that their plan and program for gradual desegregation is necessary, in the public interest, and is consistent with good faith implementation of the governing constitutional principles as announced in *Brown* v. *Board of Education, supra,* taking into account all of the local conditions and problems herein-

above set out; and the Court has concluded, in the exercise of its discretion, that the prayer for the declaratory judgment and injunctive relief should be denied."

Considering the great number of parks, playgrounds, and recreational facilities maintained by the City of Memphis; the remarkably large number of children—65,000 white children and 35,000 Negro children—participating in the program under the guidance of trained supervisors and directors of planned recreation; the circumstances showing a substantial desegregation of many of the City's recreational facilities, prior to the hearing in the district court, and a continuing program of desegregation since that time; the evidence that immediate desegregation of all of the City's parks, playgrounds, and recreational facilities would result in great damage to the organized system of play for many children, and the probable closing of a number of recreational facilities, due to the necessity of providing considerable additional police protection and park supervision; the past and present success of the continuing plan of desegregation now being peacefully and harmoniously carried out by the City; the unquestioned good faith of the officials of the City and Park Commission in attempting to comply, in the field of recreation, with the opinion of the Supreme Court in *Brown* v. *Board of Education*, both before the hearing of this case in the district court, and since that time; the requirement that the Park Commission file a plan for desegregation of the City's park and recreational system to be subject to the approval of the district court; the fact that this appeal was taken before the plan, ordered by the court, was filed, and that the district court has never had an opportunity to approve or disapprove such a plan—these considerations require a determination that, under the circumstances of this case, there

was a proper exercise of discretion by the district court in denying injunctive relief, in providing for a plan of desegregation to be filed by the Park Commission with the court, and in reserving jurisdiction for further proceedings in the case; and in accordance with the foregoing, the judgment of the district court is affirmed on the findings of fact and conclusions of law of Judge Boyd.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 424.

I. A. WATSON, JR., T. W. NORTHCROSS, SR., W. D. SPEIGHT, JR., A. E. HORNE, SR., MELVIN MALUNDA, JOHNNY GHOLSTON, HAROLD GHOLSTON, ALFRED HAYNES, JR., JOHN ROGERS, THOMAS PUGH and CURTIS KING, on Behalf of Themselves and Others Similarly Situated,
Petitioners,

vs.

CITY OF MEMPHIS, a Public Body Corporate, et al.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

J. S. ALLEN,
WALTER CHANDLER,
FRANK B. GIANOTTI, JR.,
THOMAS R. PREWITT,
Memphis, Tennessee,
Attorneys for Respondents.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

QUESTION PRESENTED.

No constitutional question is involved in this case. Respondents fully recognize and are actually applying the established principle of constitutional law that Negroes are entitled to make use, on a desegregated basis, of public parks and recreational facilities of the City of Memphis.

The only question presented in the lower courts in this suit seeking injunction to require immediate and complete desegregation of the races in all the public parks and recreational facilities operated by respondents was whether the Trial Judge had the discretionary right, under the undisputed proof in this case, to deny the relief sought and to approve plan of gradual integration.

STATEMENT OF THE CASE.

The Trial Court did hand down an Opinion (forming part of the Judgment) and this Opinion is attached hereto (App. 1b). Petitioners make no attack on the correctness of the Trial Court's Findings of Fact; therefore, we assume that all Findings may be accepted as having been sustained by competent proof. Reference to the Trial Court's Findings need be made for proper determination of the question herein involved.

The City of Memphis has a population of approximately five hundred thousand (500,000), thirty-seven per cent (37%) of which are Negro, and sixty-three per cent (63%) are White (1960 Census). Memphis is located in the extreme southwest corner of Tennessee and is bounded on the west by Arkansas and the south by Mississippi. The population of the adjoining counties in Arkansas, Mississippi and West Tennessee is predominantly Negro (App. 106a).

There are 131 parks owned by the City of Memphis and operated by Memphis Park Commission, 108 of which are developed and in use. At the time of trial, 25 of these parks were integrated, including Zoo, Art Gallery and McKellar Lake Boat Dock. As respects the balance, with very few exceptions, the parks reserved for Negroes are in neighborhoods which are completely or predominantly Negro; and likewise, the parks reserved for White people are in neighborhoods which are completely or predominantly White. In the City of Memphis, the races are separated by neighborhoods, and the Park Commission has consistently followed neighborhood patterns in providing recreational facilities for members of both races; and it has been its policy to remove restrictions applicable to Negroes as neighborhoods are converted, by voluntary action, from White to Negro, as early as practicable (App. 106a, 107a).

Recreational facilities operated by the Memphis Park Commission were set out in the Trial Court's Findings of Fact. These facilities include 10 swimming pools—5 reserved for White use and 5 for colored; but since the trial, the swimming pool in Malone Park has been changed from White to Negro, leaving 6 swimming pools for Negroes and 4 for White. Respondents operate 61 playgrounds on City owned property—40 reserved for White use and 21 for use by Negroes—together with 56 playground facilities operated by the Park Commission on property owned by churches, private groups and the School Board—30 of which are reserved for White use and 26 for Negro. At the time of trial, there were 12 community centers with gymnasiums on City owned property—8 of which were reserved for White use and 4 for colored; but, as pointed out by the Court of Appeals, the Gaston Community Center, formerly reserved for White use, has been changed since the date of trial in the District Court. All 7 of the City owned golf courses, under the plan as approved by the Trial Court, will be fully desegregated by January 1, 1964. At the present time, 3 of the 7 golf courses are already integrated[1] (App. 107a, 108a, 109a).

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[1] The fact that no Negro will be denied the privilege of playing golf during transition period is fully shown in the proof. At time of trial in the District Court 5 of the 7 golf courses were reserved for White use and 2 for colored. In 1960, out of a total of 232,413 golf players on the 7 City courses less than 13,000 were Negroes; thus, Negroes, comprising less than 6% of the golf players, used approximately 30% of the public courses (App. 51a, Exhibit 4), and Fuller Golf Course, formerly used only by Negroes, but integrated, under the plan approved by the Trial Judge, on February 1, 1962, is the finest in Memphis and potentially one of the best in the United States (App. 74a).

A similar situation existed with respect to those Negro plaintiffs who claimed discrimination in use of tennis courts. At the time of trial, those plaintiffs were playing tennis at Gooch Park and others without charge, whereas, there was an admission fee at John Rogers Tennis Courts (formerly reserved for Whites); and the Gooch court was much closer to their homes (App. 32a, 34a,

In making the transition from a predominantly segregated park system to an integrated system, respondents concluded, following much study, and after desegregation of such citywide facilities (as distinguished from neighborhood parks and playgrounds), as the Zoo, Art Gallery and McKellar Lake Boat Dock, that the 7 public golf courses and Fairgrounds Amusement Park should be next desegregated. This program was evolved because these facilities involved areas which were less sensitive in the matter of race relations than other areas, and which were less likely to cause confusion and turmoil in the transition period (App. 54a). Respondents' plan as submitted to the Trial Court took into account also that it would have been unfair to desegregate Fairgrounds Amusement Park in the middle of the year because of the effect it would have had on rights of certain concession holders who operate under contract with the Park Commission (App. 49a). Other reasons in support of gradual integration are set out in testimony of Harry Pierotti, Chairman of the Park Commission, and H. S. Lewis, Director of Parks (App. 54a, 55a, 56a, 75a, 82a, 83a, 84a).

The Recreational Department of the Memphis Park Commission is rated by competent authorities as the best in the South. Its recreational program for Negroes is the finest in the country. Approximately 100,000 children participate in one or more of the recreational activities sponsored by the Memphis Park Commission, and of this number approximately 35,000 are Negroes. The Recreational Department of the Park Commission sponsors many and varied types of recreational activities, including, but not limited to, competitive sports, such as baseball and basketball, dancing, and many other activities. The Recreational Department headquarters itself is operated on

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36a). Under the plan, John Rogers Tennis Courts were integrated January 1, 1962, in accordance with suggestion of the Trial Court (App. 111a).

an integrated basis, and all Negro Supervisors and Directors are paid on the same salary schedule as the White Supervisors and Directors; and the qualifications for such Negro Supervisors and Directors are equal to or greater than that of their White counterparts (App. 108a).

In finding that respondents were acting in good faith in recognizing constitutional rights of Negroes to use of public parks and facilities on an integrated basis, the Trial Court gave consideration to the following:

(1) Importance of time to accomplish change-over from a partially segregated system to an integrated one.

(2) Good will and understanding heretofore obtaining between the races.

(3) The fact that, pending the transition period now in progress, ample recreational facilities, under the operation of the Park Commission, will be available to all Negro citizens of Memphis, and no Negro will be denied the right to avail himself of those facilities.

(4) Maintenance of law and order.

(5) Avoidance of confusion and turmoil in the community.

(6) Revenues available from concessions operated on park property.

(7) The fact that immediate integration would result in a denial to a substantial number of citizens, both Negro and White, of an opportunity to avail themselves of recreational facilities now afforded to all citizens of Memphis.

(8) The constitutional and other legal rights of all citizens, both White and Colored (App. 110a).

The Trial Judge found as a fact that "immediate forced integration of all facilities of the Park Commission would

be unwise under all the circumstances as presented by the proof. The plans and programs evolved by the Park Commission properly take into account the constitutional rights of Negro citizens without overlooking many other factors, as hereinabove set out" (App. 110a).

Although no attack is made on the correctness of the lower court's Findings of Fact, it is significant that the proof showed, without dispute, that immediate forced integration of all races in all parks and facilities would (1) seriously impair the good will and understanding that has heretofore obtained between the races in the City of Memphis[2] (App. 50a); (2) result in a denial to a substantial

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[2] Marion Hale, Superintendent of Recreational Department of Memphis Park Commission, with 36 years' experience in field of public recreation, testified:—

"Q. Now, Mr. Hale, with reference to this integration problem, and you recognize there is a problem you have to face in your work, do you not?

A. Yes, sir.

Q. What effect, Mr. Hale,—and I want you to base your answer on the years of experience you have had in the recreation field dealing with both white and colored, would forced integration, immediate integration, have on the recreation department of the Memphis Park Commission?

A. From my years of experience, Mr. Lawyer, sudden recreation will create havoc.

Q. You mean sudden integration?

A. I mean sudden integration.

I think we have a problem and me and my staff realize we have a problem, and we are continually observing these problems and trying to work them out, but if you were to order immediate integration of all our playgrounds no telling what would happen.

I have heard it discussed about the violence and we all know that is true.

I think there is another point that is important, is to see the relationship broken down between the white and the colored. A relationship that we have worked so hard to build up. A friendship, that through my thirty-six years has become increasingly fine, and I think that many, many playgrounds—I don't think it, I know it.—would have to be closed down and I think that you would need more supervision.

I think you would have lots and lots of violence, and irregardless of who started it the violence will be there. I think your playground system, if we integrate suddenly, would be

number of Negro citizens, as well as White, of recreational facilities now available;[3] (3) create great difficulties

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ruined. If we had a little time to give some deep thought and consideration where we can work this thing out harmoniously for the good of both races where we can work it out and ponder over it and do it on a gradual basis.

Q. Have you discussed this with your Negro supervisors?

A. I have discussed it many times.

Q. Are they in accord with your thinking?

A. Well, I have—I would hate to answer that question. Yes, I would say they are in accord with my suggestion here on the stand. Especially the supervisors."

(Transcript of Evidence, pp. 214-216.)

[3] H. S. Lewis, Director of Parks, has been operating head of the Memphis Park System for 16 years (App. 72a). Before that time he had considerable experience in recreation work (App. 85a). He testified:—

"Q. If you are forced to integrate all of these recreational facilities, in your opinion, Mr. Lewis, based on your dealings with white and Negro alike, would that result in a denial to these thirty-five thousand Negro children of substantial recreational facilities which they have been enjoying?

A. In my opinion, it will, yes.

Q. Why do you think that is true, Mr. Lewis, and I will ask you first if you are forced into that situation now without being able to exercise any discretion of your own, would you have to have more or less supervisors and instructors?

A. You would have to have considerably more.

Q. What about policemen to patrol the various playgrounds and parks?

A. In my opinion, we would have to have considerably more policemen.

Q. Since opening up the Zoo, have you had to increase the police protection there?

A. We have.

Q. And if every other facility in Memphis were opened up, in your opinion, would it also have to be increased?

A. It would.

Q. And would that or not be a burden upon all the people of the City of Memphis?

A. It would be a tremendous burden, yes.

Q. In your opinion, Mr. Lewis, is it going to take considerable time and a whole lot of patience and understanding for you and the other people who head the Park Commission to try to work out this problem of racial integration in the public parks?

A. It will, quite a bit.

Q. Is it your desire to offer to every Negro child in Mem-

in maintaining law and order, while this difficulty will be greatly diminished if integration is carried out on a gradual basis (App. 101a, 102a).

Petitioners introduced no proof whatever to refute the showing made by respondents that harmful effects to both

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phis the same treatment, the same facilities that are offered to the white people?

A. That is what we try to do to the best of our ability.

Q. And is that the established policy of the Park Commission?

A. That is the policy, yes.

Q. Now, Mr. Lewis, have you worked with children quite a bit in your capacity as head of the Park Commission?

A. I have.

Q. And the Park Commission is necessarily closely related and deals closely with many children, as you mentioned, about a hundred thousand?

A. Right.

Q. If the recreational program of the Memphis Park Commission is impaired by forced integration, what effect, in your opinion, would that have on these thirty-five thousand Negro children and sixty-five thousand white children?

A. We would have to, under the present budget, reduce the number of playgrounds drastically in order to give them full protection.

Q. And would that, or not, result in a denial of recreational facilities to a great number of children, white and Negro?

A. It would.

Q. And in your opinion, would that have some relation to juvenile delinquency then?

A. It certainly would.

Q. It speaks for itself, doesn't it?

A. Right.

Q. Do you try to keep as many children off the streets as you can during the summer vacation period?

A. That is the purpose of our program, yes.

Q. And is one of the purposes of that to cut down on juvenile delinquency?

A. It is, yes.

Q. For all children?

A. All children.

Q. Now, Mr. Lewis, you have studied this problem in other cities in the country, both north and south?

A. I have.

Q. And is your opinion based upon a survey of other cities as well as your experience here in the City of Memphis for the last sixteen years?

A. It is."

(App. 83a to 85a.)

Negro and White people would follow if immediate integration of the races in all parks and facilities were ordered. As the Trial Judge, in his Opinion, so aptly stated:

> "No valid objection to this plan, in the Court's opinion, is offered in this case. The plaintiffs merely say they want all these facilities fully integrated now. Nothing else seems to matter."
>
> (App. 3b.)

"PINK PALACE MUSEUM".

The City of Memphis acquired "Pink Palace Museum" and property on which it is located by deed dated August 2, 1926 from Garden Communities Corporation. This deed provided that the property should be used for benefit of White persons only and it reserved right of re-entry for breach of such condition or covenant.[4]

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[4] Said deed provided:—

"(c) Said building and grounds shall be devoted wholly and exclusively to public uses for the benefit of persons of the Caucasian race only and as a convervatory (sic), art gallery, museum of art or natural histroy (sic), library and/or for general recreational purposes in connection with the Memphis Park System, including parks adjacent thereto; and said second party, for itself and its successors, covenants and agrees that it will not use, nor suffer or permit said property be (sic) be used under its authority, for any other purpose that is objectionable or offensive to the residents in said community; and that in no event shall any part of said property be used in connection with any business for private pecuniary profit, but only and solely for public benefit, recreation and culture as aforesaid.

(d) In the event of a breach of either or any of the foregoing covenants or conditions in any substantial particular, and such breaches shall continue for a period of ninety days after written notice to Memphis Park Commission, or to the commission, board or official to whom its functions may hereafter be delegated, and after a copy of said notice shall be delivered to the Mayor or other chief official of the party of the second part, or its successor, such notice specifying the breach complained of, and for which forfeiture is sought, then the foregoing dedication or conveyance shall be and become

The "Advisory Board Memphis Museum" recommended to the Memphis Park Commission on January 6, 1959 that the Museum property be sold for residential purposes and that a new Museum be built on other City property. In response to this request, J. S. Allen, Esquire, the then Park Commission Attorney, submitted comprehensive report and summary of titles to the property involved and stated in his report dated February 5, 1959 "that neither the City nor the Park Commission could safely sell or cease the use for museum or park purposes as to any of the respective properties conveyed by these deeds.

Said report and opinion was made before the present lawsuit was filed (App. 112a).

Respondents' present policy with reference to "Pink Palace Museum" is not based upon any effort to deny Negro citizens of Memphis the right to use of this facility, but rather is based upon a policy of attempting to preserve title to the property. Respondents have evinced a willingness to remove all race restrictions obtaining at said Museum, except for the fact that they feel a removal of all restrictions based on race might result in a loss of this valuable property to the City and the Park Commission (App. 112a, 113a).

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void at the option or election of said party of the first part, or its assigns; and in such event if said breach is not remedied and corrected within said period of ninety days, the party of the first part, or its assigns may re-enter and take possession of said mansion house and every part thereof, including the aforedescribed parcel of land on which the same is located, and hold the same as of its first and former estate therein, with all additions or betterments, free of any claim of said second party, or its successors. Provided, such forfeiture shall not be permitted if such breach is wholly discontinued or remedied within said period of ninety days. A waiver for any period of time of a breach of either or any of the foregoing covenants and conditions in any particular shall not preclude a forfeiture for a continuance thereof after notice as above specified." (Exhibit 2.)

The lower Court, under doctrine of "abstention", stayed any adjudication with reference to said Museum and ordered respondents to file action in the Chancery Court of Shelby County, Tennessee, before September 15, 1961 to determine what effect integration of the races at said Museum will have upon the City's title (App. 120a). If the State Court holds that the City's title will not be affected by integration of the races, the plan of respondents to integrate "Pink Palace Museum" can be carried out and the District Court will not be called upon to make any adjudication in regard thereto.[5]

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[5] Original Bill for Declaratory Judgment, pursuant to the lower Court's mandate, was filed in the Chancery Court of Shelby County, Tennessee, on September 1, 1961, cause number 64064-2 R. D. The relief therein sought is a declaratory judgment decreeing that respondents may remove all restrictions based on race in the use and enjoyment of "Pink Palace Museum" and certain adjacent properties without jeopardizing or impairing title of the City of Memphis to the properties in question

ARGUMENT.

Petitioners perfected their appeal to the Court of Appeals before the Trial Court had an opportunity to pass on respondents' plan for integration of playgrounds and community centers. The District Judge, in line with the policy followed in **Kelley v. Board of Education of City of Nashville, 270 Fed. 2d 209 (6th Cir., 1959), cert. den. 361 U. S. 924,** ordered respondents to submit a more complete plan by December 15, 1961. In view of the appeal, of course, the hand of the Trial Judge has been stayed; and in this state of the record it would, therefore, seem that petitioners are not in any position to insist that respondents' plan for gradual desegregation is inadequate or incomplete.

The question presented to the Court of Appeals and to this Court thus narrows itself to the proposition of whether the District Judge, as a matter of law, was compelled to enter an order requiring respondents to integrate the races immediately in all public parks and recreational facilities of the City of Memphis, notwithstanding the undisputed proof that it would be manifestly unwise to do so.

The crux of petitioners' argument is that the Trial Judge and the Court of Appeals had no discretion in framing a decree in a suit of this character; and that the traditional rules of equity, which obtain in injunction cases and which are recognized in **Brown v. Board of Education of Topeka, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083** (second decision decided May 31, 1955), do not apply in the field of public parks and recreation. The authority cited by petitioners is **Florida ex rel. Hawkins v. Board of Control, 350 U. S. 413 (1956),** in which the Court held "our second decision in the Brown case * * * had no application to a case involving a Negro applying for admission to a state law school."

Petitioners also rely upon **Sweatt v. Painter, 339 U. S. 629,** which again involved the right of a Negro to attend a state law school.

It is respectfully submitted that the authorities relied upon by petitioners are not in point. No reason for delay was advanced in the law school cases.

The principles announced in **Brown v. Board of Education,** supra, and further elaborated on in **Aaron v. Cooper, 243 Fed. 2d 361 (8th Cir., 1957),** and **Kelley v. Board of Education of City of Nashville,** supra, seem most appropriate here. In approving the Nashville plan of gradual integration of the public schools, the Court in the **Kelley Case,** said at **270 Fed. 2d at pages 225 and 227**:

> "Cases involving desegregation, like other cases, depend largely on the facts. While the law has been stated, perhaps, as definitely as it can be stated at the present time, by the Supreme Court, nevertheless, its application depends upon the facts of each particular case. '[Because] of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity.' Brown v. Board of Education, 347 U. S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873. 'Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.' • • •
>
> "'In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Tra-

ditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.' Brown v. Board of Education, 349 U. S. 294, 299, 300, 75 S. Ct. 753, 765, 99 L. Ed. 1083. The court further went on to say that at stake was the personal interest of the plaintiffs in admission to the public schools as soon as possible on a non-discriminatory basis; that effectuating this interest may call for elimination of a variety of obstacles in making the transition; that courts of equity may properly take into consideration the public interest in the elimination of such obstacles; that, once a start is made, the courts may find that additional time is necessary to carry out the ruling in an effective manner.

* * * * * * *

"The complaint of appellants is that the plan does not conform to the mandate that desegregation take place with all deliberate speed. As Mr. Justice Frankfurter said in his concurring opinion in Cooper v. Aaron, supra [358 U. S. 1, 78 S. Ct. 1412]: 'Only the constructive use of time will achieve what an advanced civilization demands and the Constitution confirms.' In the Court of Appeals, in Aaron v. Cooper, 8 Cir., 243 F. 2d 361, it was observed that a reasonable amount of time to effect complete integration, in certain places, might be unreasonable in other places. It was said, in another case, that 'a good faith acceptance by the school board of the underlying principle of equality of education for all children with no classification of race might well warrant the allowance by the trial court of time for such reasonable steps in the process of desegregation as appear to be helpful in avoiding unseemly confusion and turmoil.' Orleans Parish School Board v. Bush, 5 Cir., 242 F. 2d 156, 166."

In **City of Montgomery v. Gilmore, 277 Fed. 2d 364 (5th Cir., 1960)**, the Court expressly held that the principles announced in the second Brown decision should be used by trial courts in formulating decrees with respect to desegregation of public parks and recreational facilities. In that case the Court of Appeals modified the lower Court's injunction so as to empower the Trial Court to vacate injunction requiring the City of Montgomery to operate all parks on a desegregated basis "in the event it should appear that the defendants may be able to plan and act more effectively so as to reopen and operate the parks within the framework of the Constitution if they are freed from the restraining effects of the injunction." (277 Fed. 2d at p. 368.)

The principle of planned gradual integration in public parks and recreational facilities is also recognized in **Cummings v. City of Charleston, 288 Fed. 2d 817 (4th Cir., 1961).** In that case Negro citizens of Charleston sought immediate access to one municipal golf course. No other public facilities were involved. In holding that no delay (beyond six months from date of lower Court's final decision) was authorized, the Court said at **288 Fed. 2d at p. 817:**

> "We have searched the record and have found no evidence which would tend to explain the postponement of the effective date of the injunction order for what would seem to be an unreasonable period of time. **We do not hold or even intimate that, if justifying circumstances were made to appear, the trial court could not exercise its sound discretion.** But it is not apparent from the record that any real administrative or other problems are here involved such as are present in some of the school desegregation cases. Indeed, the record discloses nothing which would indicate that the injunction

could not have been made immediately effective." (Emphasis supplied.)

The principle of gradual integration, as announced by this Court in the **Brown case**, has also been applied in the field of public housing in the City of Detroit. Cf. **Detroit Housing Commission v. Lewis, 226 Fed. 2d 180 (6th Cir., 1955).**

In considering the action of the Trial Court in denying the application for injunction, it should be borne in mind that upon appeal the ruling of the lower Court will not be disturbed unless contrary to some rule of equity or the result of improvident exercise of judicial discretion. **Meccano, Ltd. v. John Wanamaker, 253 U. S. 136, 141, 40 S. Ct. 463, 64 L. Ed. 822; National Fire Ins. Co. of Hartford v. Thompson, 281 U. S. 331, 338, 50 S. Ct. 288, 74 L. Ed. 881.** The discretion of the District Judge is necessarily broad and a strong showing of abuse must be made to reverse it. **United States v. W. T. Grant Co., 345 U. S. 629, 633, 73 S. Ct. 894, 97 L. Ed. 1303.**

It would seem that had the lower Court issued injunction as prayed for, under the undisputed proof as shown in this record, it would have been an abuse of discretion. Cf. **Rippy v. Borders, 250 Fed. 2d 690 (5th Cir., 1957).**

Respondents recognize that the Memphis Park System and its recreational facilities must under established law be operated on a desegregated basis and that the former system must be changed in compliance with the law as announced by the Supreme Court. The only question herein involved is the manner in which this desegregation should take place. All of the proof introduced upon the trial supports the conclusion that gradual integration, as opposed to immediate integration, is in the best interest of all the citizens of Memphis, both White and Negro. No proof was introduced by the petitioners to support

their contention that immediate integration is the proper method of complying with the law as set forth in the **Brown** and other cases.

Petitioners' argument that a different rule of equity practice should apply to public parks and recreational systems, than is applied in public educational systems, seems untenable on its face. Manifestly, in view of the large numbers of people involved with respect to the Memphis Park System, there will be problems inherent in any transition from a segregated to a desegregated system. Those problems were carefully covered by the Trial Court and the Court of Appeals.

Pink Palace Museum.

If the State Court declares, in suit now pending, that integration of the races at "Pink Palace Museum" will not jeopardize the City's title to the property, there will be no occasion for intervention of the Federal Court, with respect to that facility, and respondents' plan in regard thereto can be carried out promptly.

Whether there now exists, in any person, firm or corporation a right of re-entry or right to claim a forfeiture of the Museum property, for condition broken, is a question of State law. In **Charlotte Park & Recreation Commission v. Barringer, 242 N. C. 311, 88 S. E. 2d 114 (1955)**, a similar provision was held to be valid and the United States Supreme Court denied certiorari, **350 U. S. 983 (1956)**.

Under applicable Tennessee decisions, however, it would appear that probably no one has an enforceable right of re-entry, for condition broken, with respect to the Museum property. See **Board v. Baker, 124 Tenn. 39, 134 S. W. 863 (1910); Yarbrough v. Yarbrough, 151 Tenn. 221, 269 S. W. 36 (1924)**. The question presented for determination

in the State Court, however, is, obviously, fraught with complexities and difficulties, and cannot be safely resolved without final adjudication.

If the State Court holds that there is presently an enforceable right of re-entry, for condition broken, with respect to the Museum, and the City is unable to acquire such right of re-entry from the holder of such right, then the constitutional question thereby presented can be determined by the Federal courts.

The action of the Trial Judge in this case is in line with many recent decisions of the United States Supreme Court, including cases involving questions of civil rights. **Harrison v. NAACP (1959), 360 U. S. 167, 3 L. Ed. 2d 1152, 79 S. Ct. 1925; Thibodaux v. Louisiana Power & Light Co. (1959), 360 U. S. 25, 3 L. Ed. 2d 1058, 79 S. Ct. 1070; Meridian v. Southern Bell Telephone & Telegraph Co. (1959), 358 U. S. 639, 3 L. Ed. 2d 562, 79 S. Ct. 455.**

The authority of the District Judge to apply doctrine of "abstention" to present situation is exhaustively covered in annotation entitled "Discretion of federal court to remit relevant state issues to state court in which no action is pending." **3 L. Ed. 2d 1827.**

A clear statement of principle herein involved is set out in the **City of Meridian case**, where the Court said at **358 U. S., pp. 640-641:**

> "Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. See Railroad Com. v. Pullman Co., 312 U. S. 496, 85 L. Ed. 971, 61 S. Ct. 643. That is especially desirable where the questions of state law are enmeshed with federal questions.

> Spector Motor Service, Inc., v. McLaughlin, 323 U. S. 101, 105, 89 L. Ed. 101, 103, 65 S. Ct. 152. Here the state law problems are delicate ones, the resolution of which is not without substantial difficulty—certainly for a federal court. Ct. Thompson v. Magnolia Petroleum Co., 309 U. S. 478, 483, 84 L. Ed. 876, 880, 60 S. Ct. 628. In such a case when the state court's interpretation of the statute or evaluation of its validity under the state constitution may obviate any need to consider its validity under the Federal Constitution, the federal court should hold its hand, lest it render a constitutional decision unnecessarily."

In **Harrison v. NAACP**, supra, the Supreme Court held that the District Court should have abstained from ruling on constitutionality of Virginia statutes until a construction of the statutes could be made by the Virginia courts "which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem." In that case the Court said:

> "This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication. See Chicago v. Fielderest Dairies, Inc., supra (316 U. S. at 172, 173)."
>
> **(360 U. S. at p. 177.)**

CONCLUSION.

The Trial Court and the Court of Appeals have found that respondents have acted and are acting in good faith in attempting to comply, in the field of recreation, with the opinion of the Supreme Court in the **Brown case**.

The Court of Appeals has held that "there was a proper exercise of discretion by the District Court in denying injunctive relief, in providing for a plan of desegregation to be filed by the Park Commission with the court, and in reserving jurisdiction for further proceedings in the case; * * *." Consequently, the petition for writ of certiorari should be denied.

Respectfully submitted,

J. S. ALLEN,

WALTER CHANDLER,

FRANK B. GIANOTTI, JR.,

THOMAS R. PREWITT,
Attorneys for Respondents.

APPENDIX FOR RESPONDENTS.

OPINION OF TRIAL COURT.

(Docket No. 9, Part of Judgment; Transcript of Evidence, p. 268 et seq., Docket No. 12.)

The Court: Gentlemen, we have had a full hearing today of all the matters involved, and here briefly are the Court's views.

The plaintiffs, invoking the Court's injunctive powers, are asking in this proceeding that the defendants be enjoined forthwith from operating certain public facilities under the jurisdiction of the Park Commission of the City of Memphis, including golf courses, tennis courts, playgrounds, parks, and the Pink Palace Museum, upon a racially segregated basis.

Restrictions on a number of the facilities here involved, including the Brooks Memorial Art Gallery, the boat dock at McKellar Lake, and the zoo, were lifted some time ago.

At least twenty-one parks, I believe, are now open to general use without restriction.

Now, the defendants are voluntarily proposing in this proceeding to remove the restrictions with respect to the amusement facilities at the Fairgrounds, and all municipal golf courses, according to a plan which they claim is necessary to an orderly transition of its heretofore segregated system to one which will admit all comers without regard to race or color.

The defendants seem to have no objection to a removal of the restrictions with respect to the Pink Palace Museum, but because of certain expressed conditions in the deed conveying this property to the city over thirty-five years ago, there is a risk which might result in a reverter to the original grantor, or its successors. That is, in the event of the integration of that facility. With respect to

this particular facility, the defendants are requesting of the Court at this time that the legal questions involved be left to the state courts for a ruling under the doctrine of abstention.

Now, the City of Memphis, through its Park Commission, carries on a very large and extensive operation in the City of Memphis. Its activities are many and varied. All things considered, the plan it proposes in this proceeding to take care of the Fairgrounds amusement facilities and the golf courses the Court is convinced is about as good as can be devised. In getting up this plan, many things necessarily had to be considered. The effective dates with respect to one or two of the golf courses are projected into the future to some extent, but the whole program under the plan, as the Court understands, may and will be accelerated in the light of new developments. The Court is well satisfied it is the purpose of the defendants to do this with all deliberate speed.

Of course, in passing upon this plan, local conditions to be encountered with respect to maintenance of law and order, the avoidance of violence and confusion in the community, revenues available from concessions, though not absolutely controlling, may, among many other things, as practical matters be weighed and considered by the Court on application for an injunction of the type here sought. Time to organize the change-over to integration after all of these years is to the Court important. The legal rights of all citizens, white and colored, are not to be overlooked in what we do here today.

Apparently the defendants have given consideration to these matters. And they, as I say, are matters for the Court to consider on application for the injunctive relief sought.

It is true no case dealing with a plan or program of integration of facilities as here involved is cited, but

we do know that our Court of Appeals in Kelly against the Nashville Board of Education, cited by the defendants, approved a so-called stairstep plan for integrating the Nashville schools. The reason in that case seems to the Court to have application in this case. The problems here are somewhat comparable to the problems faced by the Nashville schools.

No valid objection to this plan in the Court's opinion is offered in this case. The plaintiffs merely say they want all of these facilities fully integrated now. Nothing else seems to matter.

The Court believes that good will and understanding between the races in this city can be best preserved and promoted by the plan here suggested by the defendants. The defendants, who are high minded public officials, have put much thought and effort into this plan. It is sound, fair, feasible and equitable. It is reasonable and within the spirit of the law, and the Court is convinced is proposed in utmost good faith. The Court approves it in all things.

It should be stated here that pending the transition period under the plan offered, no citizen will be deprived of his right to play golf or to avail himself of other activities sponsored by the Memphis Park Commission.

With respect to the Pink Palace Museum, the Court thinks it wise that it stay any adjudication which might affect the title to this valuable property until the state courts can have an opportunity to decide the complex questions involved. The doctrine of abstention in matters of this nature of course has been recognized by the courts, including the Supreme Court, many times.

The Court thinks the defendants, however, should take the initiative on this particular matter and get a suit under the declaratory judgment act of Tennessee filed in

the Shelby County Chancery Court. This should be done within ninety days. Incidentally, it occurs to the Court that additional parties will be necessary to a full adjudication of the matter. But this, of course, will be left for you lawyers to decide.

The John Rogers tennis courts on Jefferson Avenue in all probability will be abandoned as such at an early date before the year is out according to the proof, since the ground upon which they stand, presently owned by the City of Memphis, is too valuable for the purpose for which they are presently being used and plans are on foot to sell the property. The Court suggests to the defendants under their over-all plan that they consider opening up these particular facilities by January 1, 1962, on an integrated basis if the property has not been disposed of by the City or the tennis courts at that location are not abandoned.

Now, no plan is offered in this proceeding concerning the integration of other recreational facilities of the Park Commission. That is, the playgrounds and community centers. The proof is that integration of the races and utilization of these facilities is a matter which in the interest of all the citizens of Memphis calls for more study. The defendants are not prepared to offer a plan to cover this highly important phase of the Park Commission's activities at this time. The Superintendent of this department has been asked by the Park Commission to get up a plan which will accomplish this objective. The proof is that a target date for such integration of the races in the use of these particular facilities cannot be set at this time. As the Court understands, additional time is necessary for additional study and planning for an orderly transition of these activities on an integrated basis.

The Court in the circumstances will not order through injunction at this time the immediate integration of these

particular recreational facilities of the Memphis Park Commission. It would be unwise for the Court to do so for many reasons. Additional time in the Court's opinion is of the essence. It is absolutely necessary for a full consideration of this troublesome matter by the defendants so that adequate plans for the transition may be devised and agreed upon.

The Court will hold this case open so that these particular matters can be given further study and consideration by the Board of Park Commissioners. The proof is that something in the way of a plan could be ready for submission to the Court in approximately one to two years. The Court in the circumstances does invite the Department to submit such a plan in this proceeding, but thinks this should be done within a period of six months.

Since the defendants have been acting for some time on a voluntary basis and have desegregated a number of its facilities, and are in perfect good faith proceeding in an orderly and effective manner to complete the whole job with respect to those remaining which are here involved, the Court rules that an injunction is unnecessary.

So, gentlemen, get up a judgment right away approving the plan submitted with respect to the Fairgrounds and the golf courses and sustaining the defendants' request for stay with respect to the Pink Palace Museum, so that the state courts may pass upon the questions there involved.

The judgment should also provide for the filing of a plan with respect to the playgrounds and community centers within six months.

The costs in this proceeding will be equally divided between the plaintiffs and defendants.

Now, the Court in these remarks has only hit the high spots. They will serve, at least temporarily, as the Court's

findings and conclusions under the rules. Others in more detail will probably be necessary, so the Court suggests you gentlemen who represent the defendants might within the next week get up additional ones to be filed with the Court. The Court will need an original and about five copies.

Counsel for the plaintiffs may if they desire also propose findings and conclusions to the Court.

All right, if there is nothing further, Mr. Clerk, adjourn court until tomorrow morning at nine-thirty.

Office-Supreme Court, U.S.
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JAN 25 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 424

I. A. WATSON, JR., *et al.*,

Petitioners,

—v.—

CITY OF MEMPHIS, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

JACK GREENBERG
CONSTANCE BAKER MOTLEY
DERRICK A. BELL, JR.
NORMAN C. AMAKER
10 Columbus Circle
New York 19, New York

A. W. WILLIS, JR.
588 Vance Avenue
Memphis, Tennessee

Attorneys for Petitioners

B. L. HOOKS
C. O. HORTON
B. F. JONES
H. T. LOCKARD
R. B. SUGARMON, JR.
Memphis, Tennessee

Of Counsel

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 424

I. A. WATSON, JR., *et al.*,

Petitioners,

—v.—

CITY OF MEMPHIS, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The district court rendered an unreported oral opinion (R. 105). Its judgment (R. 102-04) was filed June 20, 1961. Its Findings of Fact and Conclusions of Law (R. 91-101), filed on June 27, 1961, are unreported. The opinion of the Court of Appeals (R. 111-122) is reported at 303 F. 2d 863.

Jurisdiction

The judgment of the Court of Appeals was entered June 12, 1962 (R. 110). The petition for writ of certiorari was filed September 10, 1962, and was granted November 19, 1962 (R. 123). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

Questions Presented

Petitioners sued to enjoin the continued operation of the Memphis park system on a racially discriminatory basis. Relying on the decision in *Brown* v. *Board of Education*, 349 U. S. 294 (1955), the district court denied the injunction and accepted respondents' plan to desegregate gradually over a period of years. The Court of Appeals affirmed on the same ground.

Do the principles stated in the second *Brown* opinion, which allow public school authorities to proceed toward desegregation "with all deliberate speed":

1. Have any application beyond the field of public education?

2. Apply to the field of public recreation?

3. If applicable to public recreation, justify continued segregation absent a showing of serious administrative impediments to desegregation?

Constitutional Provision Involved

This case involves Section One of the Fourteenth Amendment to the Constitution of the United States.

Statement

On May 13, 1960, petitioners for themselves and other Negro citizens residing in Memphis, filed suit in the United States District Court for the Western District of Tennessee, Western Division, for a declaratory judgment and permanent injunction restraining the Memphis Park Commission and others from operating public recreational facilities on a racially segregated basis. Jurisdiction was based on 28 U.S.C. §1343(3), 28 U.S.C. §§2201, 2202 and 42 U.S.C. §§1981, 1983.

In substance they complained that defendants maintained some facilities exclusively for white and others exclusively for Negro citizens. Petitioners further alleged that they and other members of the class attempted to use facilities restricted to white persons and were barred or arrested on account of race or color contrary to the equal protection clause of the Fourteenth Amendment and 42 U.S.C. §1981 (R. 2).

July 1, 1960, defendants answered (R. 8-12). The answer did not deny operating segregated recreational facilities. Rather, defendants asserted in justification: that facilities for Negroes were equal to those for whites; that Memphis provided a system of neighborhood parks designated for whites or Negroes according to the racial make-up of the area and that "[i]n other than residential areas, the parks are used generally by all the citizens of Memphis" (R. 9);[1] that certain lands upon which recreational facilities were situated were acquired under restrictive conditions relating

[1] Evidence, however, showed that the neighborhood policy was not uniformly adhered to in that in some previously white neighborhoods which became predominantly Negro, the parks or playgrounds were still maintained exclusively for whites (R. 78). Moreover, at least one city-wide facility, Crump Stadium, was still operated on a segregated basis (R. 79).

to use solely by white persons; that "problems" in the nature of "riots, violence, and disharmony" (R. 10, 11) would be the likely consequence of immediate court-ordered desegregation of all facilities and, therefore, these defendants in discharge of their duties as public officers and in exercise of their police power felt it necessary to maintain the system as constituted; that a loss of revenue would result from a loss of attendance caused by fear of disorders; that the expense of operating the parks would be prohibitive because of the extra police protection required, since "the incidence of violence, vandalism and disorders among visitors to the parks of the City of Memphis is greatly increased in those parks frequented by Negro citizens of the City of Memphis" (R. 12).

The cause came on for trial June 14-15, 1961. The facts were established substantially as plaintiffs alleged: The City of Memphis, through its Park Commission, operated and maintained a public recreational system of 108 parks[2] on city-owned land. Fifty-eight of the parks were reserved for the exclusive use of white persons, 25 were for Negroes, and 25 were partially or wholly integrated.[3] The facilities reserved for whites included 40 neighborhood playgrounds, 8 community centers, 5 golf courses and 5 swimming pools (R. 93). Negroes who attempted to use "white" facilities were denied admission, and in some cases were arrested if they refused to leave when ordered (R. 25, 74-77). Reserved for Negroes were 21 neighborhood play-

[2] In addition, the Park Commission operated 56 playgrounds and facilities on property owned by various churches; 30 designated as "white," the rest restricted to Negroes (R. 70).

[3] At at least one of these facilities, however, racial bars had not been completely removed; the toilet facilities at Overton Park Zoo were still segregated at the time of trial (R. 83). Testimony also revealed that at one of the older "integrated" facilities, Court Square, there were toilets for whites only (R. 75).

grounds, 4 community centers, 5 swimming pools, and 2 golf courses (R. 93).

The Park Commission's policy was to open up parks from time to time for all citizens (R. 39). It had recently removed racial restrictions at three "city-wide" facilities as part of its gradual desegregation plan (R. 40), and other facilities throughout the city were scheduled to be desegregated on a gradual basis in accordance with that plan (R. 41). Commission officials and the local chief of police testified that, in their opinion, any desegregation in public recreational facilities taking place in any manner other than that proposed by the Commission's gradual plan would produce turmoil, confusion, and perhaps bloodshed in the City of Memphis (R. 42, 48, 53, 88), although there had not been any violence in the past due to the integration of facilities nor had any "agitators" appeared (R. 53, 81). The belief that immediate integration of all facilities would lead to violence was based on anonymous letters and phone calls that were received when facilities had been integrated in the past (R. 53). They further testified that Memphis, having been "singularly blessed by the absence of turmoil up to this time," the Park Commission desired to make all City-wide facilities available to Negroes "with all deliberate speed" (R. 43).

There was evidence relating to an art gallery and museum known as the "Pink Palace" in support of defendants' assertion that certain lands upon which public recreational facilities had been built had been acquired through deeds containing racially restrictive covenants. It was urged, therefore, that complete integration should await construction of these deeds by the Tennessee courts (R. 39).[4]

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[4] However, the Pink Palace Museum had been opened for Negro use one day per week (R. 50) without objection from the corporate grantor or its successors (R. 50, 51).

On June 20, 1961, the District Court, the Honorable Marion Speed Boyd presiding, entered judgment denying petitioners' application for permanent injunction as prayed in the complaint, approving the Park Commission's gradual plan (R. 102-104), requiring defendants to submit a further plan with respect to integration of playgrounds and community centers within a period of six months,[5] and staying decision with reference to the Pink Palace Museum until the Chancery Court of Shelby County, Tennessee, had an opportunity to determine the effect of integration of the races upon the title to this property (R. 103). The Court in its Findings of Fact and Conclusions of Law (R. 91-101) found that because of the local conditions in Memphis, additional time was needed to accomplish full desegregation of the public recreational facilities and that the gradual plan was in the public interest and was "consistent with good faith implementation of the governing constitutional principles as announced in *Brown* v. *Board of Education* [349 U. S. 294 (1955)]" (R. 101).

Petitioners on July 7, 1961, appealed to the United States Court of Appeals for the Sixth Circuit. On June 12, 1962, that Court affirmed the judgment of the District Court on the Findings of Fact and Conclusions of Law of the District Judge. The Court of Appeals stated that the sole issue tendered by petitioners on their appeal was whether the allowance of any delay in total desegregation of all Memphis recreational facilities deprived them of their constitutional rights, i.e., whether the decision in the second *Brown* case applied to public recreational facilities as well as to public schools. In deciding this issue, the Court said:

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[5] Under the provisions of this plan, which was submitted on oral argument in the Court of Appeals at that Court's request, complete integration of all facilities would not occur until 1971. The plan, however, was not made part of the record.

We are of the view that the principle stated in *Brown* v. *Board of Education*, *supra*, relating to the desegregation of schools, is applicable to the present case, involving the desegregation of recreational facilities of the City of Memphis. In our opinion the *Brown* decision is not limited to cases involving public schools, as is here contended by appellants. *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180, 184, 185 (C. A. 6); see also *Cummings* v. *City of Charleston*, 288 F. 2d 817 (C. A. 4) (R. 120).

ARGUMENT

I.

Constitutional Rights Should Be Enforced Immediately. To This Established Rule the Second *Brown* Decision Is a Narrrow Exception Which Was Never Intended to Cover Anything But Public Elementary and Secondary Schools.

There can be no question that the Fourteenth Amendment entitles petitioners to the nondiscriminatory use of all parks and recreational facilities operated by the City of Memphis. At issue here is whether any justification exists for prolonged abridgement of these rights. Petitioners find none and contend that the desegregation of these public recreational facilities must be effected immediately.

Constitutional rights are personal and present. This settled principle, which means that the enforcement of recognized constitutional rights cannot be put off until some future time, has often been invoked by this Court in cases closely analogous to this one. See *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, 642; *Sweatt* v. *Painter*, 339 U. S. 629, 635; *Sipuel* v. *Board of Regents of University*

of Oklahoma, 332 U. S. 631, 632-33. The logic of the rule is demonstrated by the paradox that would ensue if this case were affirmed: thousands of Negroes in Memphis would be denied admission to scores of city parks for several years although the right of which they demand immediate exercise has been recognized—in the abstract—by the highest court in the land.

The courts below have held that the second *Brown* decision, *Brown* v. *Board of Education*, 349 U. S. 294 (1955), controls this case and permits lengthy delay in the full implementation of petitioners' admitted constitutional rights. Petitioners disagree, for that decision can have no application to any area other than public schools.

A fundamental distinction exists between the decision of May 17, 1954, and that of May 31, 1955. In the former, *Brown* v. *Board of Education*, 347 U. S. 483, this Court was acting in its role as expositor of the Constitution, and it declared that segregated educational facilities, being inherently unequal, constituted a denial of the equal protection of the laws. Since 1954, this principle has properly been extended, by this Court and by the lower courts, to every aspect of public activity. However, in 1955, this Court was exercising its function as a court of equity, which must deal with the circumstances of the particular case when framing a specific decree. Recognizing that the "solution of varied local *school* problems" could best be effected by the district courts, this Court remanded each of the consolidated cases for detailed treatment by the respective district courts. This remedial determination stemmed from an examination of the peculiar difficulties arising from the alteration of complex public school systems, and has no relevance whatever to other areas in which segregation has been enforced.[6]

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[6] See, e.g., *Gayle* v. *Browder*, 352 U. S. 903 (public transportation): "The motion to affirm is granted and the judgment is affirmed. *Brown* v. *Board of Education*, 347 U. S. 483 . . . " It is to be noted that the 1955 opinion was not cited.

The narrow compass of the 1955 decision was demonstrated the following year when this Court ordered the immediate admission of a Negro applicant to graduate school. *Florida ex rel. Hawkins* v. *Board of Control*, 350 U. S. 413 (1956). On May 24, 1954, the Supreme Court had issued a mandate to the Supreme Court of Florida directing that the case be reconsidered in light of the decision of 1954 "and conditions that now prevail." *Florida ex rel. Hawkins* v. *Board of Control*, 347 U. S. 971. Following the Florida Supreme Court's subsequent refusal to grant the Negro immediate relief, this Court held that its previous decision "did not imply that decrees involving graduate study present the problems of public elementary and secondary schools." 350 U. S. at 413. See also *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir. 1957). It is also significant that in *Dawson* v. *Mayor and City Council of Baltimore*, 220 F. 2d 386 (1955), *aff'd*, 350 U. S. 877 (1955), this Court affirmed the Fourth Circuit's ruling without opinion, despite the City's insistence[7] that the second opinion in *Brown* should apply.[8]

Apart from precedent, strong considerations of policy suggest that the doctrine of the second *Brown* opinion should be limited rather than extended. First, it is an anomaly in the law that personal rights—especially rights so highly valued as those protected by the equal protection

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[7] Jurisdictional Statement, p. 19, *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877 (No. 232, Oct. Term 1955).

[8] Contrary to the conclusion of the court below, the lower courts have not countenanced delay in areas other than schools. In *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180 (1955), the Sixth Circuit upheld a district court order requiring immediate assimilation of separate waiting lists for Negro and white housing projects. While the relief given could not assure the immediate achievement of nonsegregated occupancy, it effected all that could possibly be done in the situation. In *Cummings* v. *City of Charleston*, 288 F. 2d 817 (4th Cir. 1961) (municipal golf course), the plaintiffs received all the relief they requested.

clause—should not be enforced forthwith. Second, around the "all deliberate speed" formula has grown a mass of litigation which, because of its complexity, severely burdens the lower courts. Finally, after nine years of experience with the "all deliberate speed" doctrine, 92.2% of the Negro school children in 17 states and the District of Columbia attend schools with no white students.[9] This is the result, on the one hand, of widespread disregard of the great principle established in 1954, and on the other hand, of the tremendous burden which the 1955 decree imposes on those who must look to the courts for enforcement of their rights.

II.

Irrespective of Whether the Second *Brown* Decision Has Any Applicability Beyond the Area of Elementary and Secondary Schools, It Does Not Apply to Public Recreational Facilities.

In the *School Segregation Cases*, this Court was dealing with the problem of transforming totally segregated systems of public elementary and high schools into systems providing full equality through the elimination of segregation. Involved in such a transformation, as the Court recognized, were taxing problems of an administrative nature, particularly those

> arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis and revision

[9] Between 1961 and 1962 the percentage of Negro children in schools with white students increased from 7.6 to 7.8. See *Southern School News*, p. 1, published by the Southern Education Reporting Service (December 1962).

> of local laws and regulations which may be necessary in solving the foregoing problems (349 U. S. at 300-01).

Clearly, the desegregation of a public recreational system presents no such administrative difficulties as might arise in public schools. Attendance at public parks is not compulsory. Users of parks are not transported to them at public expense. Persons need not be assigned to individual parks or facilities. Whereas the overcrowding of schools presents a serious obstacle to rapid desegregation, overcrowded conditions in park facilities are automatically controlled by factors of supply and demand; the first comers are served while the late comers wait their turn, find other accommodations or do without the benefits of the facilities, all at their own discretion. Recreational activities, being less closely supervised, require fewer personnel than schools. Local park authorities are bound by fewer and less restrictive state regulations than school boards.

In sum, the administration of a park system is less complex. Effectuation of complete desegregation of public parks requires little more than the removal of racial signs, and an announcement that racial distinctions will no longer be observed. In all other respects, the park system can operate on a desegregated basis exactly as it does on a segregated basis.[10]

[10] Full integration of park personnel requires some administrative effort, but such relief is not requested in this case.

III.

Assuming That in Some Cases the Principles of the Second *Brown* Decision May Be Applied to Delay Desegregation of Public Recreational Facilities, This Record Presents No Considerations Which Justify Delay.

Petitioners maintain that the second *Brown* decision sanctions delay in the public schools only, and that in any event it does not permit continued segregation of public recreational facilities. Assuming, however, that neither of these arguments finds favor with this Court, it is submitted that faithful application of the 1955 decision to the facts established in this record requires an order directing immediate desegregation of the Memphis park system.

Petitioners proved at trial that the Memphis Park Commission operates a city-wide, public recreational system on an almost wholly segregated basis (R. 92, Finding No. V). It was further shown that several Negro citizens had been denied admission to or ejected from various facilities or arrested for refusing to leave, solely on the ground of race. These facts were uncontested. Upon such a clear showing of a violation of constitutional rights, normal procedure for any court is to formulate a remedy which will eliminate such denials forthwith. This the district court did not do.

Justification for this departure from normal practice was predicated on the *Brown* opinion of 1955. However, in that case this Court did not give the lower courts *carte blanche* to withhold relief in desegregation cases until the administrative authorities deemed compliance with the governing constitutional principles to be convenient or desirable. It merely declared that varying local conditions

may at times make immediate compliance impracticable, and set forth a list of those administrative problems which could be considered as justifiably prolonging the process of complete obedience. The burden of presenting the case for delay rests on the defendants who have violated the Constitution, 349 U. S. at 300, and absent a showing of administrative impracticability, the district court's duty to order immediate desegregation remains.

By a parity of reasoning, if the doctrine of "all deliberate speed" is to be applied to recreational systems, delay cannot be tolerated unless such administrative factors as those listed in the second *Brown* decision are shown by the public officials to require some hesitation in the complete vindication of a complainant's rights. Respondents in this case utterly failed to carry the burden placed upon them. At the trial, their witnesses made dire predictions about the consequences of immediate integration, but examination of each supposed problem reveals both the inadequacy of proof presented and the irrelevance of the considerations raised.

Confusion, Turmoil and Bloodshed

Time and again throughout the trial, respondents' three witnesses expressed the fear that confusion, turmoil, violence and bloodshed would ensue if desegregation proceeded rapidly (R. 42, 43, 47, 53-55, 57, 72, 73, 80-87, 87-90). However, these oft-repeated convictions were supported by almost no facts. One witness testified that he received anonymous letters and telephone calls whenever a facility was opened to both races (R. 53). Another mentioned that policemen sometimes had to be called to control rowdyism on the segregated playgrounds, more often on Negro playgrounds (R. 81). One reference was made to the fact that additional police had been assigned to a recently desegre-

gated zoo. Finally, one incident was mentioned in which "bloodshed and shootings and knifings" had occurred in one Negro park (R. 83). No other evidence of previous violence was produced, although racial bars had been removed at twenty-five facilities by the time of trial.

On the other hand, the Chairman of the Park Commission acknowledged that Memphis has been "singularly blessed by the absence of turmoil up to this time on the racial question" (R. 43), and testified that no violence had erupted at any of the integrated facilities (R. 53). Indeed, police protection in the park system generally seems not to be a very serious problem, since there are only fourteen men on the city's entire park police force (R. 84). It also appeared from the testimony that the police have been able to preserve order since buses in the city were desegregated (R. 87). The record refers to only one instance of violent reaction to racial issues in the City of Memphis, and in that incident, a sit-in demonstration, the police observed the development of mob conflict for "twenty or thirty minutes" before taking action (R. 90).[11]

Assuming, however, that immediate desegregation of all parks would pose a threat to the maintenance of law and order, respondents still would not be relieved of the duty to remove racial restrictions. This was settled for all time in *Cooper* v. *Aaron*, 358 U. S. 1 (1958). If the conditions existing in Little Rock, to which the President was forced to send federal troops, could not excuse postponement of

[11] Respondents' witnesses attempted to make much of Memphis' "peculiar location" in the southwest corner of Tennessee, bordering on heavily Negro counties of Mississippi and Arkansas (R. 47-48, 53-55, 90). Apparently it is feared that immediate and total integration would cause a massive influx of outside Negroes into Memphis' parks and promote racial agitation by members of both races. Like respondents' other evidence on the issue of violence, this is irrelevant speculation.

school desegregation, certainly a city "singularly blessed by the absence of racial turmoil" cannot continue its discriminatory policies in the name of maintaining law and order. As this Court held, "[L]aw and order are not here to be preserved by depriving the Negro children of their constitutional rights," 358 U. S. at 16. The case of *Buchanan* v. *Warley*, 245 U. S. 60, 81 (1917), established the same principle over forty-five years ago: "[I]mportant as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." Cf. *Taylor* v. *Louisiana*, 370 U. S. 154 (1962).

Closing of Facilities

Related to the claim that violence would flare up if immediate desegregation were ordered is respondents' contention that many facilities would have to be closed because insufficient personnel would be available to provide police protection at all parks (R. 41, 61, 64, 73, 85-86). This contention rests precariously on the premise that violence would constitute a serious problem. As was observed above, precious little evidence justifies concern on this score. Furthermore, the existing pattern of residential segregation (R. 67) substantially reduces the chance that neighborhood playgrounds, which comprise a major portion of the park system, will experience much actual desegregation even when official restrictions are removed.

On the other hand, in the unlikely event that respondents' fears of widespread public disturbance are vindicated, ample police protection is available even in the most extreme situations from state and federal law enforcement agencies. Given the capacity of law enforcement officials to maintain order, the courts should not be deterred from

enforcing constitutional rights by defiant threats to close public facilities. Cf. *City of St. Petersburg* v. *Alsup*, 238 F. 2d 830, 832 (5th Cir. 1956), *cert. denied*, 353 U. S. 922. Indeed, in numerous school cases segregation has been enjoined in the face of closing laws and enforcement of the closing laws has been enjoined as well. *James* v. *Almond*, 170 F. Supp. 331 (E. D. Va. 1959), *app. dismissed*, 359 U. S. 1006; *Aaron* v. *McKinley*, 173 F. Supp. 944 (E. D. Ark. 1959), *aff'd sub nom. Faubus* v. *United States*, 361 U. S. 197; *Bush* v. *Orleans Parish School Board*, 187 F. Supp. 42 (E. D. La. 1960), *aff'd*, 365 U. S. 569; *Id.*, 188 F. Supp. 916 (E. D. La. 1960), *aff'd*, 365 U. S. 569; *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E. D. La. 1961), *aff'd*, 368 U. S. 515 (1962).

Economic Loss

The second most important factor (R. 57) motivating respondents to proceed slowly was the possibility of revenue losses resulting from a predicted decline in attendance at integrated facilities (R. 48, 57-58, 84-85). The only fact mentioned in this connection was that three-quarters of a million dollars is collected annually from revenue-producing facilities. Comparative rates of attendance at segregated and nonsegregated parks were not given. No evidence of decreasing attendance at integrated facilities was offered. This claim is entirely bereft of evidentiary support.

However, respondents' failure to show that integration would cause economic loss is of little consequence. The City of Memphis and its Park Commission, as instrumentalities of the State of Tennessee, should not be allowed to profit from a system based on racial segregation. The lower courts have decided this point often. See *Department of Conservation and Development* v. *Tate*, 231 F. 2d 615 (4th Cir. 1956), *cert. denied*, 352 U. S. 838 (1956); *City*

of St. Petersburg v. *Alsup*, 238 F. 2d 830 (5th Cir. 1956), *cert. denied*, 353 U. S. 922 (1957); *City of Fort Lauderdale* v. *Moorhead*, 152 F. Supp. 131 (S. D. Fla.), aff'd 248 F. 2d 544 (5th Cir. 1957). Cf. also *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 724 (1961).[12]

Loss of Title to City Properties Burdened With Restrictive Covenants

Another consideration purporting to stand in the way of immediate desegregation relates to those facilities, particularly the Pink Palace Museum, located on lands conveyed to the city through deeds containing facially restrictive clauses (R. 33-37, 50-52, 59-60). The city argued that the federal courts should abstain from ordering desegregation until the state courts had determined whether title to such properties would revert to the grantors if the covenants or conditions were breached. To that end, the district court ordered the city to seek an adjudication in the state courts (R. 103, 108). This was plain error, for whatever the outcome of that litigation, the city may not continue to operate these facilities on a segregated basis. See *Pennsylvania* v. *Board of City Trusts of Philadelphia*, 353 U. S. 230 (1957). This property litigation may be a long and arduous process, during which Negroes should not be forced to endure discrimination.

This is particularly true where, as here, constitutional rights are being denied on a mere speculation that the

[12] The respondents were also solicitous of the vested interest in segregation held by private concessionaires who operate under contract with the Park Commission and rely on high rates of attendance (R. 42, 65, 66, 83, 84). Again there was no proof of a genuine threat to the concessionaires' interests. Moreover, if this claim could be substantiated, *Burton* v. *Wilmington Parking Authority*, *supra*, which required the lessee to admit Negroes, more than establishes the Commission's duty to desegregate where it retains control of policy in the parks.

grantor may assert his supposed rights under the racial restriction. The deed in question provided that the racial restriction could be enforced by the grantor only after he had given a written notice and a further ninety-day period of continued violation had elapsed (R. 36). It is extremely doubtful that a corporate grantor would attempt to enforce such a racial condition where its breach was occasioned by obedience to an injunction. Indeed, at the time of trial, the grantor had given no notice even though the restriction was being violated to the extent of allowing Negroes to use the Pink Palace on Tuesdays (R. 50-51).

Other Factors

The other considerations urged by respondents—that Negro facilities were equal to those provided for whites, that immediate desegregation would reduce good will between the races, and that additional time was needed for the citizens of Memphis to adjust to a changing social structure—are equally inapposite. To the "equal facilities" argument (R. 44-46, 59, 63, 69, 71, 72, 78), the answer is that 58 parks are reserved for white persons, 25 for Negroes (R. 69, 92). Regardless of the proportion of Memphis' population which Negroes comprise (35% (R. 47)), those 25 facilities are necessarily more widely scattered throughout the city than the 58 white facilities, and thus are less accessible. Indeed it is questionable whether separate recreational facilities in a city of 500,000 can ever be equal, even when judged solely by tangible factors. When less tangible factors are considered, it becomes relevant that the conceded right of petitioners to freedom from segregation is grounded on the premise that separate facilities are inherently unequal. Liberation of the Negro school child from feelings of racial inferiority cannot be achieved by relegating him to a segregated playground after school hours.

The contention that existing good will between the races would suffer if the Negro petitioners' rights were vindicated immediately is spurious (R. 88). If contingent upon continued subjection of one race to a position of inferiority, this communal bond is hardly worthy of preservation; if it is not so conditioned, integration will cause no problem. At any rate, *Cooper* v. *Aaron*, *supra*, demonstrates that even extreme racial tension cannot prevent the enforcement of Fourteenth Amendment rights.

Additionally, it was pleaded that respondents be given the time that gradual desegregation would provide for the citizens of Memphis to adjust to new conditions (R. 72, 89). Except for references to problems of police protection (but see *Cooper* v. *Aaron*, *supra*; *Taylor* v. *Louisiana*, *supra*), respondents offered no proof that gradual adjustment, which prolongs any possible period of disquiet, should cause less pain than immediate adjustment. A fair reading of this record compels the conclusion that the Commission was simply hesitant to move ahead of community acceptance of this Court's decisions. As this Court held in the *Brown* case, "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." 349 U. S. at 300.

The various contentions raised by respondents reveal a fundamental misunderstanding of the nature of the problems which this Court contemplated as justifying some delay in public school desegregation. Obviously this Court did not mean that constitutional rights could be deprived indefinitely or whenever delay would make the transition easier. Rather, as the list of administrative problems set out in the *Brown* opinion implies, delay is only tolerable when additional time is needed for the responsible authorities to formulate solutions to *bona fide* administrative difficulties, or, to a lesser extent, to carry into execution complex administrative procedures. Without exception,

respondents in this case failed to explain to the district court how additional time might be used constructively to devise administrative procedures for the solution of their supposed problems. Rather they urged that the problems would disappear if only sufficient time were given for desegregation to be effected gradually. Both the letter and spirit of the 1955 decision command more diligent effort.[13]

Finally, respondents urged that they had shown good faith. This they claimed with an apparent sincerity[14] which the facts do not bear out. Although this Court established that segregated parks violate the Fourteenth Amendment in 1954 (*Muir* v. *Louisville Park Theatrical Ass'n*, 347 U. S. 971), several new parks and facilities have been opened on a segregated basis in Memphis since that time (R. 31, 52; 14, 102). What better opportunity to effectuate of sincere policy of gradual desegregation than to admit all citizens as each new park is opened? What better way to solidify a segregated system than to segregate new facilities? The city claimed that all "city-wide" facilities have been opened to both races, but the record shows that Crump Stadium was not open to Negroes (R. 79). It was contended that Court Square had been desegregated, yet there were no rest rooms for Negroes (R. 75). Contrary to announced policy, some neighborhood playgrounds in predominantly Negro neighborhoods were still reserved for whites (R. 78-79). And, against the protestation that twenty-five facilities had been desegregated must be placed the fact that Negroes were not

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[13] Typical of respondents' approach was the treatment of the proposition that "extra supervisors and employees" would be needed in newly integrated facilities (R. 47). Having predicted this need, the Chairman of the Commission failed to explain why such personnel would be needed, how the Commission proposed to meet this supposed need, or why time would be necessary to work out a solution.

[14] The Chairman of the Park Commission stated that he would "abide by the rules of this court or get off the Park Commission, because I want no incidents here like they have had in other parts of the south" (R. 53).

adequately informed of their right to attend newly desegregated facilities. The testimony of H. S. Lewis, Director of Parks, concerning the recent desegregation of one facility is enlightening:

> Q. "Was there any publicity given to the fact that it had been integrated?" A. "No."
>
> Q. "Was there any way that Negroes could know that they had a right to use Court Square?" A. "Except they used it and were not chased."
>
> Q. "I say if the police do not put them out of a particular park then they are free to use it?" A. "Certainly."
>
> Q. "They would not know, according to your testimony, whether they are free to use it until the police asked them to get out?" A. "That could be."
>
> Q. "Have Negroes been advised of their right to use Confederate Park?" A. "They have used it. Whether they have been advised or not is a good question" (R. 75-76).

Judged in the light of these facts, the Commission can hardly assert that good faith, in the ordinary meaning of the term, has been shown. Much less has it shown "good faith compliance at the earliest practicable date" or "good faith implementation of the governing constitutional principles." The case it put before the district court displays its apparent inability even to understand those principles.

The district court in this case, although finding that Memphis' recreational system is operated on a racially discriminatory basis, refused to grant either injunctive or declaratory relief, approved a tentative plan to open eight facilities over a period of two and a half years, granted respondents six months in which to file a complete plan, and refused to adjudicate the allowability of continued segregation by state officials on land burdened by a racially re-

strictive covenant (R. 102-04). As this brief has undertaken to demonstrate, the district court's judgment rested on a clearly erroneous conception of the meaning of the *Brown* decision and of the evidence which a court should consider. Its action constituted an abuse of discretion which the Court of Appeals should have reversed. *Clemons* v. *Board of Education of Hillsboro, Ohio,* 228 F. 2d 853 (6th Cir. 1956); *id.* at 859 (Stewart, J., concurring). Fully consistent with this Court's recognition of a District Court's competence to assess local conditions with which it is familiar is the fundamental proposition that disregard of overriding constitutional principles must not be tolerated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

JACK GREENBERG
CONSTANCE BAKER MOTLEY
DERRICK A. BELL, JR.
NORMAN C. AMAKER
10 Columbus Circle
New York 19, New York

A. W. WILLIS, JR.
588 Vance Avenue
Memphis, Tennessee

Attorneys for Petitioners

B. L. HOOKS
C. O. HORTON
B. F. JONES
H. T. LOCKARD
R. B. SUGARMON, JR.
Memphis, Tennessee

Of Counsel

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 424

I. A. WATSON, JR., ET AL., PETITIONERS

v.

CITY OF MEMPHIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (R. 111–122) is reported at 303 F. 2d 863. The opinion of the United States District Court for the Western District of Tennessee (R. 105–110) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 12, 1962 (R. 110). The petition for a writ of certiorari was granted by this Court on November 19, 1962 (371 U.S. 909; R. 123). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the enforcement of Negroes' constitutional right to non-discriminatory access to public recreational facilities may be delayed where the public authorities have failed to meet their burden of establishing that serious physical obstacles and other unique problems stand in the way of immediate desegregation.

INTEREST OF THE UNITED STATES

This case marks the first time that the Court has had before it on the merits the issue of whether the decision of this Court to allow public primary and secondary schools to be desegregated "with all deliberate speed" (*Brown* v. *Board of Education*, 349 U.S. 294), rather than forthwith, has become the general rule (and not an extremely limited exception) with respect to the desegregation of public facilities—here, public recreational facilities. The government participated as *amicus curiae* in the cases which led to the formulation of the *Brown* decree and supported the view that, under general doctrines of equity, some delay in the enjoyment of the right to attend non-segregated public schools was not impermissible. Problems peculiar to school segregation were cited in the government's briefs as warranting a departure from the general rule that constitutional rights are *present* rights. As the second *Brown* opinion shows, the Court adopted this reasoning. The question whether similar considerations are applicable in cases involving the right of equal access to

public recreational facilities is an issue of national importance.

STATEMENT

This action was brought by adult Negro citizens of the United States and the State of Tennessee, residing in the City of Memphis, Tennessee, on behalf of themselves and others similarly situated, to desegregate the public recreational facilities in that city. Filed on May 13, 1960, the action was in the form of a complaint for declaratory and injunctive relief, invoking jurisdiction under 28 U.S.C. 1343, 2201, 2202 and 42 U.S.C. 1981, 1983.

The plaintiffs alleged that certain public libraries, parks, playgrounds, golf courses, boat docks, and lakes are restricted to the exclusive use of either whites or Negroes[1] and that public art galleries and museums restrict their admission of Negroes to one day per week, whites being exclusively admitted on all of the other days (R. 6).

The answer of the defendants was filed on July 1, 1960. It did not deny the existence of racial segregation in public recreational facilities in Memphis, asserting in this respect only that "[i]n other than residential areas, the parks are used generally by all the citizens of Memphis" (R. 9). The defendants also alleged that the facilities made available to Negroes were adequate in proportion to their numbers; that "historically and traditionally, riots and violence have frequently occurred in areas where races

[1] It was also claimed that the "white" facilities "far outnumber" those which are restricted to Negroes (R. 6).

are mixed in large numbers in places of amusement" (R. 11); that the geographical location of the city engendered peculiar problems; and that "the incidence of violence, vandalism and disorders among visitors to the parks of the City of Memphis is greatly increased in those parks frequented by Negro citizens" (R. 12). The answer pointed to the possible loss of revenues from concessions and the prohibitive cost of additional police protection as reasons for not desegregating and cited specific problems relating to racially restrictive covenants affecting the title to certain parks (R. 11, 12).

At the trial, held on June 14–15, 1961, it was shown that the recreational program of the City of Memphis serves 100,000 children, approximately 65 percent of whom are white and 35 percent Negro. Of the 131 parks owned by the city, 58 are white-only, 25 Negro-only, 25 are desegregated, and 23 undeveloped (R. 39, 92).[2]

Negro witnesses testified to instances where they were turned away from playgrounds (R. 26) and golf courses (R. 13, 16, 24) located more conveniently to their homes than available Negro facilities. Other witnesses experienced racial exclusion or discrimination when they tried to use the Fairgrounds amusement park (R. 18), the Pink Palace art museum (R. 18), certain tennis courts (R. 27, 30), and when they tried to enter a fishing rodeo (R. 20).

The chairman of the park commission (R. 32–61), the superintendent of the park system (R. 62–86) and

[2] The zoo, an art gallery and a boat dock at McKellar Lake are desegregated (R. 40).

the chief of police (R. 87–90) testified that, in their opinion, violence and disorder would result if all of the public recreational facilities in Memphis should desegregate at once (R. 54, 88) and that a curtailment of the program for the Negro children might occur (R. 71). The Commission chairman stated, however, that no violence had occurred at those facilities already desegregated (R. 53). The superintendent related that police protection had been increased at the zoo since it was desegregated (R. 72), but the only specific instance of disorder in the parks that he cited occurred at one of the closing exercises for Negroes at Lincoln Park, a problem admittedly not connected with desegregation (R. 83). The chief of police apparently based his opinion that violence and disorders might occur upon his experience with the desegregated bus system. The police, he said, "had many calls on the trouble we have had on the buses since they have been integrated" (R. 87). He also cited one specific instance of racial trouble in connection with a "sit-in" at a drug store (R. 90).

On June 20, 1961, the district court entered its judgment denying the injunction (R. 103).[3] It

[3] The district court found that Memphis has 117 playgrounds, 12 community centers, and ten swimming pools. Of the 117 playgrounds, 61 are on city-owned property controlled by the park commission. Of these, 40 were restricted to whites and 21 to Negroes. The other 56 playgrounds and facilities operated by the park commission are on property owned by churches, private groups and the school board. Of these, 30 are restricted to whites and 26 to Negroes. The 12 community centers with gymnasiums are all on city-owned property; eight

approved the plan of the defendants for desegregating the Fairgrounds by the end of 1961 and for desegregating the golf courses in stages, the last stage occurring on January 1, 1964 (R. 102–104). The court retained jurisdiction of the cause, staying its adjudication of the controversy concerning the Pink Palace art museum to allow the state courts time to pass on the racial covenant, and ordered the defendants to submit within six months from June 15, 1961, a plan for the desegregation of the playgrounds and community centers (R. 96). The court held that "[n]o specific terminal date for such integration can be set at this time" (R. 96).

The plaintiffs appealed, and on June 12, 1962, the court of appeals affirmed (R. 110).

SUMMARY OF ARGUMENT

The courts below justified postponement of the enforcement of petitioners' right to equal access to public recreational facilities by reference to *Brown* v. *Board of Education*, 349 U.S. 294, where the Court directed that public primary and secondary schools be desegregated "with all deliberate speed." In the context of public recreational facilities and on the record in this case, we submit that the courts below erred in permitting delay.

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of these were restricted to whites and four to Negroes. Of the ten swimming pools, five were restricted to whites and five to Negroes. At the time of the district court decision, restrictions as to use by Negroes were scheduled to be removed "in the near future" at one of the white-only community centers and at one of the white-only pools (R. 92–93).

I.

When the Court had the school segregation cases before it, the principle was already well established that the constitutional right of Negroes to be free from discrimination on account of their race is a present and immediately enforceable right. However, both the Court and the parties to the *Brown* case recognized that public primary and secondary school desegregation posed such serious physical obstacles and other unique problems that some reasonable delay might be appropriate. In conformity with this conclusion, the Court ordered the schools desegregated "with all deliberate speed."

In thus sanctioning a measure of delay in public school desegregation, the Court was not abandoning the principle that constitutional rights are presently enforceable or engrafting a "with all deliberate speed" exception as a permanent and routine feature in the enforcement of Fourteenth Amendment rights. It simply held that, in the face of obstacles as formidable as those facing the public school systems, it was within the appropriate discretion of a court of equity to permit a reasonable amount of delay in desegregation. The Court emphasized that in each case the burden was upon the public officials to justify any such delay.

II.

There is nothing about public recreational facilities to suggest that their desegregation would present insuperable problems. None of the difficulties identified by the Court in its *Brown* opinion is present in

any significant degree. The only major area of similarity between the public school and recreational facility situations is the fact that both involve large numbers of people. However, this factor has far more significance in the educational field because of closer supervision, more constant and regular attendance, and its compulsory character. Thus, since no problems fairly comparable to those involved in public school desegregation are readily apparent in the case of desegregation in public recreational facilities, the burden upon public officials to justify any delay in the latter instance is extremely heavy.

III.

In this instance, the public authorities failed to make any case at all for the proposition that delay was warranted by serious obstacles standing in the way of desegregating the City's recreational facilities. This is demonstrated by an analysis of the factors cited by the district court. A number of them depended upon assumptions of potential violence and increased need for police protection, which were without any concrete support in the record. Others were based on such untenable concepts as that "separate but equal" facilities were adequate for the petitioners and that popular hostility to desegregation would justify delay. Still other factors, such as the fact that good will and understanding prevails between the races, argued more for prompt desegregation than for delay. In short, the public authorities failed entirely to meet their burden of establishing that serious

physical obstacles and other unique problems stand in the way of immediate desegregation.

ARGUMENT

The courts below have ordered that the vindication of the petitioners' unquestionable right, under the Fourteenth Amendment, to the abolition of racial discrimination in the public recreational facilities of Memphis may be postponed under a plan for gradual desegregation. They justify this conclusion by reference to this Court's decision in *Brown* v. *Board of Education,* 349 U.S. 294, where the Court directed that public primary and secondary schools be desegregated, not immediately, but "with all deliberate speed" (349 U.S. at 301).

It is the position of the government, as *amicus curiae, First,* that the right to equal protection of the laws is a present and immediately enforceable right and that the Court in the *Brown* case was willing to sanction a measure of delay only because of the formidable physical obstacles and other unusual problems that would be encountered in the complete integration of large and complex public school systems; *Second,* that, since no fairly comparable problems are readily apparent in the case of desegregation in public recreational facilities, the burden upon public authorities to justify any delay is an extremely heavy one; and *Third,* that the public authorities in this case have established no necessity whatever for any delay in the desegregation of the public recreational facilities of Memphis.

I. THE RULE THAT CONSTITUTIONAL RIGHTS ARE PRESENTLY ENFORCEABLE IS SUBJECT TO EXCEPTION ONLY IN THE MOST UNUSUAL AND EXIGENT CIRCUMSTANCES

By the time this Court had before it the cases involving segregation in primary and secondary schools, it had become well established that the constitutional right of Negroes to be free from discrimination on account of their race is a present right, entitled to immediate enforcement. Thus, in *Sipuel* v. *Board of Regents*, 332 U.S. 631, 633, the Court (citing *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337) declared that a State must provide Negroes with a legal education in state institutions in conformity with the equal protection clause and that it must do so "as soon as it does for applicants of any other group." In *Sweatt* v. *Painter*, 339 U.S. 629, the Court ordered the admission of a Negro to the University of Texas Law School; quoting the *Sipuel* case, *supra*, it said, "It is fundamental that these cases concern rights which are personal and present" (339 U.S. at 635).[1]

Similarly, in *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, the Court struck down restrictions on full and non-discriminatory attendance by a Negro at

[1] The idea that the constitutional right to equal protection of the laws is a "personal" right as well as a "present" one was developed in response to arguments pointing to the limited number of persons who might have been actively demanding their enjoyment. As the Court said in *Missouri ex rel. Gaines* v. *Canada*, *supra*, "petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws and the State was bound to furnish him within its borders facilities for legal education * * * whether or not other negroes sought the same opportunity." 305 U.S. at 351.

the graduate school of the University of Oklahoma, saying (339 U.S. at 642):

> We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws [citing *Sweatt* v. *Painter*, *supra*].

That the concept of the present enforceability of the right to equal protection had become firmly ingrained in our constitutional jurisprudence by the early 1950's is further demonstrated by the fact that there had been no thought or suggestion of delay in the enforcement of the rights involved when this Court ended racial discrimination in such areas as voting,[7] interstate travel,[8] property ownership,[9] restaurants in the District of Columbia,[10] employment,[11] and jury service.[12]

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[7] *Smith* v. *Allwright*, 321 U.S. 649; *Schnell* v. *Davis*, 336 U.S. 933; *Terry* v. *Adams*, 345 U.S. 461; *Lane* v. *Wilson*, 307 U.S. 268; *Rice* v. *Elmore*, 165 F. 2d 387 (C.A. 4), certiorari denied, 333 U.S. 875.

[8] *Henderson* v. *United States*, 339 U.S. 816 (1950); *Morgan* v. *Virginia*, 328 U.S. 373; *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28.

[9] *Shelley* v. *Kraemer*, 334 U.S. 1; *Hurd* v. *Hodge*, 334 U.S. 24; *Buchanan* v. *Warley*, 245 U.S. 60; *Harman* v. *Tyler*, 273 U.S. 668; *City of Richmond* v. *Deans*, 281 U.S. 704; *Barrows* v. *Jackson*, 346 U.S. 249; *Oyama* v. *California*, 332 U.S. 633.

[10] *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100.

[11] *Railway Mail Assn.* v. *Corsi*, 326 U.S. 88; *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Takahashi* v. *Fish and Game Comm.*, 334 U.S. 410; *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232; *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768.

[12] *Ex parte Virginia*, 100 U.S. 339; *Virginia* v. *Rives*, 100 U.S. 313; *Hill* v. *Texas*, 316 U.S. 400; *Cassell* v. *Texas*, 339 U.S. 282; *Avery* v. *Georgia*, 345 U.S. 559.

The primary and secondary school cases, however, presented situations of an altogether different order. No evidentiary showing was necessary to make it clear that in those cases the Court would be confronted with unique and complex physical problems far greater in magnitude than those experienced in any of the prior racial discrimination cases. Thus, in its first opinion in *Brown* v. *Board of Education*, 347 U.S. 483, the Court noted that because the cases involved were class actions, "because of the wide applicability of this decision, and because of the great variety of local decisions, the formulation of decrees in these cases presents problems of considerable complexity" (347 U.S. at 495); accordingly, the Court took the unusual step of postponing its decision on the relief to be granted until after further argument on certain specified questions, notably: "[M]ay this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?" (347 U.S. at 496, n. 13).[11]

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[11] The full text of the questions (which had been among a number of questions previously propounded at 345 U.S. 972–973) was:

> 4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
>
> (*a*) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> (*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be

The briefs filed by the various parties in response to this question suggested, in varying degrees, that the peculiar problems presented by the desegregation of public primary and secondary schools might well warrant some delay in the enforcement of the Court's decision on the merits. The factors put forward by the parties as indicating the appropriateness of a departure from the ordinary rule that constitutional rights are presently enforceable included: [12]

1. The possibility that extensive revision of school district boundaries and consolidation of schools might become necessary;

2. Problems of transfer of teachers and pupils; revision of teaching schedules; and alteration of transportation arrangements; elimination of duplication of functions arising from

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brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4 (*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(*b*),

(*a*) should this Court formulate detailed decrees in these cases;

(*b*) if so, what specific issues should the decrees reach;

(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and, if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

[12] While this listing is necessarily somewhat generalized, we believe it to be a fair summary of what was developed at length in the various briefs submitted in the *Brown* case.

the existence of separate sets of supervisory and administrative officials for Negro and white schools;

3. Necessity of changes in the law where allocation of school funds depends by statute upon the relative number of Negro and white children of school age;

4. The added burden of accomplishing these difficult administrative tasks in an environment of potential hostility generated by long-standing community acceptance of segregation as a "way of life";

5. The vast number of persons involved;

6. The great variation in the type of racial situation to be encountered in different communities.

7. The psychological adjustments necessary where great numbers of persons of different racial backgrounds would be brought into close contact.

In announcing its decree, *Brown* v. *Board of Education*, 349 U.S. 294, the Court accepted the view that, because the implementation of its decision on the merits might "call for the elimination of a variety of obstacles in making the transition to [desegregated] school systems" (349 U.S. at 300), some reasonable delay in the enforcement of the rights involved could be justified. The Court gave meaning to this conclusion by setting forth some of the considerations that it had in mind (349 U.S. at 300–301):

> problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas

> into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.

On the other hand, it expressly rejected some of the factors that had been advanced by the parties; thus, it emphasized that "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them" (349 U.S. at 300).

In light of those difficult problems, the Court sanctioned a measure of delay by ruling that an end to public school segregation should be accomplished "with all deliberate speed."[13] It is apparent not only from the unusual procedure employed by the Court in those cases, but from the face of its opinion as well, that the Court was willing to accept this departure from the settled principle of present enforceability only

[13] The brief filed on behalf of the County School Board of Prince Edward County seems to have been the first to suggest the "with all deliberate speed" concept, by citing language by Mr. Justice Holmes in *Virginia* v. *West Virginia*, 222 U.S. 17, 19–20. Mr. Justice Holmes there said, "But a state cannot be expected to move with the celerity of a private businessman; it is enough if it proceeds, in the language of the English Chancery, with all deliberate speed." The United States Commission on Civil Rights in its 1959 Report, p. 157, n. 52, disclosed that a student legal research group of the University of Virginia had, on its behalf, researched the English Chancery cases from 1220 to 1865 and had found nothing closer to the language quoted than "with all convenient speed" and "as soon as conveniently might be." Similar research was apparently also done by Mr. Jack Greenberg, who reported in *Race Relations and American Law*, p. 216, that he and others who researched the English precedents "extensively" had found "nothing to elucidate the term's meaning."

because of the truly exceptional character of the physical problems involved in the cases before it. And even though the magnitude of those problems was obvious, the Court emphasized that in each case "[t]he burden rests upon the defendants to establish that [additional] time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date" (349 U.S. at 300).

It is thus abundantly clear that the Court, in permitting some delay in the desegregation of public primary and secondary schools, did not mean to abandon the principle that constitutional rights are entitled to present enforcement, or to engraft a "with all deliberate speed" exception upon the law as a permanent and routine feature in the enforcement of Fourteenth Amendment rights. That this is so is further demonstrated by the fact that in a number of subsequent cases the Court has summarily rejected attempts to postpone the enjoyment of the right to equal protection. Thus, in the field of higher education, the Court in *Florida ex rel. Hawkins* v. *Board of Control*, 350 U.S. 413, remanded the case on the authority of its decision in the *Brown* case, stating that "[a]s this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates." See also *Lucy* v. *Adams*, 350 U.S. 1; *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (C.A. 6), certiorari denied, 353 U.S. 965. The same is true in the field of transportation facilities. See

Boynton v. *Virginia*, 364 U.S. 454; *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala.), affirmed, 352 U.S. 903; *Flemming* v. *South Carolina Electric & Gas Co.*, 224 F. 2d 752 (C.A. 4), appeal dismissed, 351 U.S. 901, and 239 F. 2d 277 (C.A. 4).

In sum, we submit that the teaching of the *Brown* case, considered in light of what had gone before and what has happened since, is that the right to equal protection of the laws, like other constitutional rights,[14] is immediately enforceable; that it is only in the face of the most formidable obstacles that any exception may be made to that principle; and that any public authorities seeking to justify such an exception must carry a very heavy burden of proof.

We are thus brought to the central question of this case: whether the desegregation of public recreational facilities—either intrinsically or as explained in the record below—is likely to involve physical problems or other unique considerations so insuperable as to bring it within that narrow exception.

II. THERE IS NOTHING IN THE NATURE OF PUBLIC RECREATIONAL FACILITIES TO SUGGEST ANY NECESSITY FOR DELAY IN THEIR DESEGREGATION

Unlike the situation in public primary and secondary schools, there is nothing about the essential character of public recreational facilities to suggest that

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[14] As the Court of Appeals for the Fifth Circuit stated recently in a school desegregation case (*Ross* v. *Dyer*, No. 11921, decided December 28, 1962, slip opin., p. 8):

> Ordinarily, on a declaration by a court of unconstitutional deprivation of rights, the relief granted is immediate and complete.

desegregation would present insuperable physical problems. None of the administrative difficulties identified by the Court in its implementation opinion in the *Brown* case (see pp. 14–15, supra) has significant application here. Thus, the problems of overcrowded classrooms and inadequate educational equipment implicit in this Court's concern over "the physical condition of the school plant" (349 U.S. at 300) have no real counterpart in such flexible facilities as public parks, playgrounds and museums. There is obviously no accessory "transportation system" (*ibid.*) problem in relation to such facilities. Whatever minor problems of "personnel" (*ibid.*) may be posed by the desegregation of recreational facilities are insignificant compared with the profound difficulties attending such a process in the closely-supervised, highly personalized school situation. The "revision of * * * districts and attendance areas" (*ibid.*) required by school desegregation finds no equivalent whatever in most systems of public parks and other recreational facilities. Finally, while the necessity for "revision of local laws and regulations" (349 U.S. at 301) raises serious problems in relation to a governmental function subject to as detailed and comprehensive regulation as schools, such is plainly not the case in the recreational field.

The only major area of similarity between the process of public school desegregation and that of public recreational facilities is that in both instances relatively large numbers of people may be involved (see p. 14, *supra*). We submit, however, that the

similarity is more apparent than real. In the first place, sheer numbers create a significantly greater administrative problem in education because of the far higher degree of supervision and because physical facilities and equipment must more closely match the number of children involved. Second, recreational facilities will normally be attended with far less frequency and regularity, on an individual basis, than educational facilities. This circumstance stems in large part from a third and extremely important difference: the compulsory character of school attendance, contrasted with the purely voluntary use of recreational facilities. This point was emphasized by the court of appeals in *Dawson* v. *Mayor and City Council of Baltimore*, 220 F. 2d 386 (C.A. 4), affirmed, 350 U.S. 877, when it said (220 F. 2d at 387):

> * * * if [a State's police] power cannot be invoked to sustain racial segregation in the schools, where attendance is compulsory and racial friction may be apprehended from the enforced commingling of the races, it cannot be sustained with respect to public beach and bathhouse facilities, the use of which is entirely optional.

Considering that there is thus nothing in the nature of recreational facility desegregation to suggest really serious physical obstacles, it is not surprising that, in almost all cases involving the desegregation of such facilities, the possibility of delay was not even considered. See, *e.g.*, *Dawson* v. *Mayor and City Council of Baltimore*, *supra* (beaches and bathhouses); *New Orleans City Park Improvement Ass'n*

v. *Detiege*, 252 F. 2d 122 (C.A. 5), affirmed, 358 U.S. 54 (golf courses and other facilities of City Park); *Holmes* v. *City of Atlanta*, 124 F. Supp. 290 (N.D. Ga.), affirmed, 223 F. 2d 93 (C.A. 5), vacated, 350 U.S. 879 (golf courses); *Tate* v. *Department of Conservation*, 133 F. Supp. 53 (E.D. Va.), affirmed, 231 F. 2d 615 (C.A. 4), certiorari denied, 352 U.S. 838 (state parks); *Moorhead* v. *City of Ft. Lauderdale*, 152 F. Supp. 131 (S.D. Fla.), affirmed, 248 F. 2d 544 (C.A. 5) (golf course); *Simkins* v. *City of Greensboro*, 149 F. Supp. 562 (M.D.N.C.), affirmed, 246 F. 2d 425 (C.A. 4) (golf course); *City of St. Petersburg* v. *Alsup*, 238 F. 2d 830 (C.A. 5) (beach and swimming pool); *Shuttlesworth* v. *Gaylord*, 202 F. Supp. 59 (N.D. Ala.) (public recreational facilities of the City of Birmingham and businesses operated in connection therewith); *Holley* v. *City of Portsmouth*, 150 F. Supp. 6 (E.D. Va.) (golf courses, swimming pools, bathing beaches, parks, etc.);[15] *Willie* v. *Harris County*, 202 F. Supp. 549 (S.D. Texas) (Silvan Beach Park); *Ward* v. *City of Miami*, 151 F. Supp. 593 (S.D. Fla.) (golf course).[16]

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[15] Although only the municipal golf course was in issue in this case, in its opinion the court said that "the separate but equal doctrine has ceased to exist with respect to governmental facilities including golf courses, swimming pools, bathing beaches, parks, etc." (150 F. Supp. at 7).

[16] In *City of Montgomery* v. *Gilmore*, 277 F. 2d 364 (C.A. 5), the court of appeals indicated that, where it indisputably appeared that ordering immediate desegregation of the park facilities of a large city would result in all citizens' being totally and indefinitely deprived of any recreational facilities whatever, some reasonable measure of delay might be appropriate. In *Cummings* v. *City of Charleston*, 288 F. 2d 817 (C.A. 4),

One other point deserves mention. The Court, in determining the character of the relief to be granted in the *Brown* case, was obliged to take into account the fact that its decision on the merits effected a substantial change in what had theretofore been widely supposed to be the law of the land. As of the early 1950's, public authorities could not fairly be said to have been on authoritative notice that public school segregation was unconstitutional and that detailed plans for eventual desegregation should therefore be laid. In view of the magnitude and complexity of the problems of public school administration, this circumstance alone lent considerable justification to a reasonable delay in the enforcement of the Court's decree. No such element is present in the case of public recreational facility desegregation in the early 1960's. It was decided by this Court in 1955 that segregation of the races in such facilities violates the equal protection clause of the Fourteenth Amendment. *Dawson* v. *Mayor and City Council of Baltimore*, 220 F. 2d 386 (C.A. 4), affirmed, 350 U.S. 877; see also *Muir* v. *Louisville Park Theatrical Ass'n*, 347 U.S. 971. Any need for time to adjust to that decision has long since been exhausted; public authorities have already had over seven years in which to

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the court indicated that "if justifying circumstances were made to appear" a trial court might have discretion to order a delay; however, no delay (beyond that agreed to by the parties) was there ordered. In *Hayes* v. *Crutcher*, 137 F. Supp. 853 (M.D. Tenn.), and *Augustus* v. *Pensacola*, 1 Race Rel. L. Rep. 681 (N.D. Fla.), the court allowed only such reasonable time as was essential for the defendants to make necessary arrangements to comply with its decree.

work out any problems posed by the desegregation of public recreational facilities.

Although the magnitude of the physical obstacles to public school desegregation—as they existed in 1954–55, at least—was obvious on the face of the matter (see, *e.g.*, *Brown* v. *Board of Education*, 345 U.S. 972, 973; 347 U.S. 483, 495), this Court was at pains to emphasize that public authorities nevertheless had the burden of establishing the actual necessity of delay in the vindication of recognized constitutional rights (349 U.S. 294, 300). If such a burden is imposed where the existence of extraordinary problems is obvious, it is, we submit, fairly inferable that a much higher burden is to be imposed where the existence of such serious problems is not readily apparent. We have shown that there is nothing in the essential nature of public recreational facilities or systems to suggest that their desegregation will present any great difficulties—not, at any rate, at this late date. It follows, we believe, that delay in such a process can be justified in a particular case only under the most exigent circumstances and upon the clearest and most convincing demonstration that the public authorities face well nigh insuperable problems.

We turn now to the question of whether such a showing was made in this case.

III. THE RESPONDENTS ADVANCED NO JUSTIFICATION FOR DELAY IN THE DESEGREGATION OF THE RECREATIONAL FACILITIES OF MEMPHIS

Although respondents offered the testimony of several municipal officials (the chairman of the park

commission, the director of the park system and the chief of police), none of them made a convincing case for the proposition that such serious obstacles stood in the way of desegregating the City's recreational facilities as would warrant delay. The lack of justification is apparent from an analysis of the factors considered by the courts below—which in turn reflected the record developed by the public authorities—in ordering the delay. The district court summarized eight such factors (R. 95),[17] each of which is briefly discussed below.

(1) *Importance of time to accomplish change-over from a partially segregated system to an integrated one.*

This factor is, of course, a mere conclusion the validity of which depends upon the adequacy of the sum of the other factors. It does, however, point up one circumstance that, if anything, militates against delay in integration: the Memphis recreational system has already been partially desegregated. Granting petitioners their rights would not require an overnight transformation from total segregation to total integration. The officials administering the system and the general public have already had some experience in adapting themselves to the change.

(2) *Good will and understanding heretofore obtaining between the races.*

Here again, it is difficult to see why this factor does not argue for prompt action rather than delay. If

[17] The district court later restated them in slightly altered form (R. 99), and this restatement was quoted in full by the court of appeals (R. 121).

there is good will and understanding among all groups of Memphis citizens, it would seem that immediate desegregation could be effected more smoothly than if there were hostility. Not that hostility between the races would justify any delay, for the Court made it clear in the *Brown* case that the constitutional principles involved here "cannot be allowed to yield simply because of disagreement with them" (349 U.S. at 300). It is relevant, too, to observe that delay may well do more harm than good to the "good will and understanding" of the community. One writer, commenting on the experience of the Board of Recreation of the District of Columbia (Indritz, *Racial Ramparts in the Nation's Capital*, 41 Geo. L.J. 297, 327), had this to say:

> The net result of the Board's actions * * * has been to impede rather than to help integration through voluntary inter-racial association and the growth of mutual understanding, to lower the quality of public recreation to all, and, most significantly, to invite community crises and warfare in mixed neighborhoods by continuing to exclude colored children from their neighborhood playgrounds while militant groups on both sides lined up for conflict.

Where a feeling of community good will and understanding prevails, delay can serve no purpose but to invite agitators to undermine and dissipate it.

(3) *The fact that, pending the transition period now in progress, ample recreational facilities, under the operation of the Park Commission, will be available to all Negro citizens of Memphis, and no Negro*

will be denied the right to avail himself of those facilities.

This factor does not, of course, state any *reason* for delay; it merely argues that delay will not seriously affect the rights of Negroes to avail themselves of recreational facilities. Furthermore, the essence of this consideration is that "separate but equal" (assuming "ample" connotes equality) recreational facilities are available to the Negro citizens of Memphis. We submit that such a factor is entitled to no weight whatever, now that *Plessy* v. *Ferguson*, 163 U.S. 537, has been laid to rest.

(4) *Maintenance of law and order.*

The short answer to this point was given by this Court in *Cooper* v. *Aaron*, 358 U.S. 1, 16, when it said that "law and order are not * * * to be preserved by depriving the Negro children of their constitutional rights." See also *Buchanan* v. *Warley*, 245 U.S. 60, 81. Furthermore, while respondents' witnesses expressed the opinion that, if the recreational system were integrated all at once, it would be necessary to increase police protection (*e.g.*, R. 72), no concrete substantiation was offered for this speculation. On the contrary, it was testified that those facilities that had already been desegregated had not experienced violence (R. 53); indeed, the only incident of violence at a recreational facility cited by any of the witnesses occurred at a segregated (*i.e.*, Negro only) exercise (R. 83; see also R. 81, where it was said that there is more rowdy behavior at Negro parks than at white parks). Moreover, there

was no concrete evidence that the park police force, with the aid of the large (725-man) city police force (R. 88), could not adjust to any increased need for protection that might eventuate.

(5) *Avoidance of confusion and turmoil in the community.*

Here, too, little in the way of actual experience was offered to support the witnesses' expressed fears that confusion and turmoil would reign in the community if all of the recreational facilities were promptly desegregated; in fact, the only specific evidence of general community reaction to recreational desegregation that was advanced was one witness's testimony that he received "a large number of anonymous letters and telephone calls to my home from white people" every time a recreational facility was desegregated (R. 53). However, the same witness testified that the City had "been singularly blessed by the absence of turmoil up to this time on this race question" (R. 43), notwithstanding the fact that a significant number of recreational and other public facilities in Memphis had been desegregated for quite some time, In any event, as we have pointed out (see p. 15, *supra*), community opposition to the enforcement of constitutional rights cannot be permitted to impede their vindication.

(6) *Revenues available from concessions operated on park property.*

Surely such a potential financial loss to the park commission—and such a loss is conjectural in the extreme—cannot justify the withholding of peti-

tioners' constitutional rights. Moreover, this point would now seem to be moot, since the only facility that appears to be affected by this factor, the Fairgrounds amusement park (see R. 42, 65), has already been desegregated in accordance with the court's order (R. 94–95, 114).

(7) *The fact that immediate integration would result in a denial to a substantial number of citizens, both Negro and White, of an opportunity to avail themselves of recreational facilities now afforded to all citizens of Memphis.*

It should be noted that the primary implication of this statement—that some of the facilities will have to be closed in the event of immediate integration—does not stem from any mandate of state law; Tennessee law permits, but does not require, racial segregation in local park facilities (Tenn. Code Ann., Tit. 62, Sec. 715), so that no legislative action would be necessary in order to accomplish complete desegregation. This suggestion that facilities may have to be closed appears to be based upon the testimony of the chairman of the park commission that, in the event of immediate and total desegregation, "We would have to, under the present budget, reduce the number of playgrounds drastically in order to give them full protection" (R. 73). No factual support for this statement was tendered. It was based on an assumption—that integrated facilities require greater police protection than segregated—which in turn had no factual support (see pp. 25–26, *supra*). However that may be, there was no indication of anything

magic about "the present budget" such that, either by internal adjustment within the City's appropriation for recreation or the enlargement of that appropriation, the resources of the City of Memphis were unequal to the task of prompt desegregation of park facilities.

(8) *The constitutional and other legal rights of all citizens, both White and Colored.*

It is not clear just what the district court has reference to in setting forth this factor. Certainly no constitutional or legal right of the Negro citizens is being advanced by a delay in the enforcement of their right to equal protection of the laws. On the contrary, that right is being subordinated to an interest—the apparent desire of some of the white citizens of Memphis that racial discrimination be maintained in the City's recreational system—which is entitled to no legal or constitutional protection whatever. Thus, this factor, like some of the others, argues far more eloquently for immediate enforcement of the petitioners' constitutional rights than it does for any form of delay.

In summary, neither the list of factors upon which the courts below based their decision nor the evidentiary record on which they purported to draw contains any justification for their refusal to direct the respondents to desegregate the Memphis recreational system forthwith. The record is altogether unconvincing that any really serious physical problems stand in the way of immediate desegregation, let alone that unique obstacles which called for the "with all de-

liberate speed" formulation in the *Brown* case are present here. We submit that the respondents entirely failed to demonstrate that physical necessity or the public interest call for any delay in the vindication of petitioners' unquestionable right to equal protection of the laws.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

BURKE MARSHALL,
Assistant Attorney General.

J. WILLIAM DOOLITTLE,
Assistant to the Solicitor General.

HAROLD H. GREENE,
ISABEL L. BLAIR,
GERALD P. CHOPPIN,
Attorneys.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. 424.

I. A. WATSON, JR., T. W. NORTHCROSS, SR., W. D. SPEIGHT, JR., A. E. HORNE, SR., MELVIN MALUNDA, JOHNNY GHOLSTON, HAROLD GHOLSTON, ALFRED HAYNES, JR., JOHN ROGERS, THOMAS PUGH and CURTIS KING, on Behalf of Themselves and Others Similarly Situated, Petitioners,

vs.

CITY OF MEMPHIS, a Public Body Corporate, ET AL., Respondents.

BRIEF OF RESPONDENTS.

J. S. ALLEN,
WALTER CHANDLER,
FRANK B. GIANOTTI, JR.,
THOMAS R. PREWITT,
Memphis, Tennessee,
Attorneys for Respondents.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-1477

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vs.

CITY OF MEMPHIS, a Public Body Corporate, ET AL., Respondents.

BRIEF OF RESPONDENTS.

QUESTION PRESENTED.

Do the principles of equity, as announced in **Brown v. Board of Education, 349 U. S. 294**, which allowed delay in effecting desegregation of public educational facilities, have any application in any case involving public recreational facilities?

STATEMENT OF THE CASE.

The size and scope of the public parks and recreational facilities operated by respondents and the extent of desegregation already carried out on a voluntary basis over the last several years are fully set out in Opinion of the Court of Appeals (R. 111), Findings of Fact of the District Court (R. 91, 92, 93, 94), and in respondents' Brief in Opposition to Petition for Certiorari. The specific factors which entered into the determination by both the District Court and the Court of Appeals that respondents were acting in good faith in recognizing the constitutional rights of Negroes to make use of all public parks and recreational facilities in the City of Memphis on a desegregated basis are set out clearly in the Findings of Fact of the District Court (R. 94, 95, 96) and in the Opinion of the Court of Appeals (R. 111).

In their brief filed in the Court of Appeals, petitioners made no attack on the District Court's Findings of Fact. The good faith of respondents was not even questioned (R. 122). In the petition for certiorari filed in this Court, the sole question presented was:—

> "Whether the courts below erred in holding that principles stated in **Brown v. Board of Education**, 349 U. S. 294, which allow delay in desegregating public schools, apply to this case which involves desegregating public recreational facilities."

ARGUMENT.

One would conclude, from reading petitioners' brief, unless he studied it very closely, that the Court of Appeals did not pass on the Findings of Fact and conclusions therefrom which were handed down by the District Court. The fact is that the Opinion of the Court of Appeals, in and of itself, presents a full answer to all of petitioners' arguments and contentions.

In concurring with the District Court's factual finding of good faith on the part of respondents, the Court of Appeals observed:—

> "Considering the great number of parks, playgrounds, and recreational facilities maintained by the City of Memphis; the remarkably large number of children—65,000 white children and 35,000 Negro children—participating in the program under the guidance of trained supervisors and directors of planned recreation; the circumstances showing a substantial desegregation of many of the City's recreational facilities, prior to the hearing in the district court, and a continuing program of desegregation since that time; the evidence that immediate desegregation of all of the City's parks, playgrounds, and recreational facilities would result in great damage to the organized system of play for many children, and the probable closing of a number of recreational facilities, due to the necessity of providing considerable additional police protection and park supervision; the past and present success of the continuing plan of desegregation now being peacefully and harmoniously carried out by the City; **the unquestioned good faith of the officials of the City and Park Commission in attempting to comply, in the field of recreation, with the opinion of the Supreme Court in Brown**

v. Board of Education, both before the hearing of this case in the district court, and since that time; the requirement that the Park Commission file a plan for desegregation of the City's park and recreational system to be subject to the approval of the district court; the fact that this appeal was taken before the plan, ordered by the court, was filed, and that the district court has never had an opportunity to approve or disapprove such a plan—these considerations require a deter- [fol. 142] mination that, under the circumstances of this case, there was a proper exercise of discretion by the district court in denying injunctive relief, in providing for a plan of desegregation to be filed by the Park Commission with the court, and in reserving jurisdiction for further proceedings in the case; and in accordance with the foregoing, the judgment of the district court is affirmed on the findings of fact and conclusions of law of Judge Boyd." (Emphasis supplied) (R. 122).

The main thrust of petitioners' brief and argument on the merits is that this record does not justify a finding of "good faith compliance at the earliest practical date" or "good faith implementation of the governing constitutional principles."

In the face of the concurrent findings of "unquestioned good faith" of respondents, petitioners, now, for the first time, raise a question of fact, which, if determined by this Court, would require a consideration of all the evidence introduced by respondents at the trial, including much evidence that was not printed in the record filed either in the Court of Appeals or in this Court. It is submitted that all questions of fact with respect to "good faith compliance by respondents with the governing constitutional principles" are now foreclosed, under fundamental rules long established by this Court.

In **Comstock v. Institutional Investors, 335 U. S. 211, at pp. 213-214**, this Court said:

> "The issues of fact, contested in [illegible]ring, are not before us for review. Petitioner assured us, in support of the petition for certiorari here, that 'there is no factual controversy before this Court' and 'we assume the findings of the District Court. Our challenge is directed only to the legal import of these unchallenged facts.'
>
> Much of petitioner's argument seems to depart from these assumptions and to invite us to reach conclusions from the voluminous record in the case, contrary to those reached by the two courts below. This we cannot do. A seasoned and wise rule of this Court makes concurrent findings of two courts below final here in the absence of very exceptional showing of error."

In **Lawn v. United States, 355 U. S. 339, at p. 362 (footnote 16)**, the Court said:—

> "Moreover, the question was not mentioned in the petition for certiorari filed in this Court. Our Rule 23 (1) (c) provides, in pertinent part: 'Only the questions set forth in the petition or fairly comprised therein will be considered by the court.' The question is not properly here. Cf. Irvine v. California, 347 U. S. 128, 129, 98 L. ed. 561, 567, 74 S. Ct. 381."

The applicable rule is stated by Mr. Justice Douglas in **Anderson v. Abbott, 321 U. S. 349, at p. 356**, as follows:—

> "The District Court found, and the Circuit Court of Appeals agreed, that Banco was organized in good faith and was not a sham; * * *. Some of these findings have been challenged. But we do not stop to examine the evidence. We accept those findings, as they were concurred in by two courts and no clear error is shown."

We shall not detail the evidence showing the various factors that influenced the District Court and the Court of Appeals in reaching a determination of the issues of fact. It is sufficient to say, as found by both lower courts, that the evidence showed great problems of administration and supervision would be created by sudden, massive integration of all parks and recreational facilities operated by the City of Memphis; whereas, these problems could be handled in the best interest of all the people if pursued from a gradual approach (R. 94, 95, 96, 105).

No proof, whatever, was offered by petitioners to support their insistence that immediate and total desegregation of all parks and recreational facilities was the best or proper way to implement their constitutional right to make use of all public recreational facilities on a desegregated basis. In that situation, only a question of law, based upon settled findings of fact, remain.

Do the principles of equity, as announced in Brown v. Board of Education, 349 U. S. 294, which allowed delay in effecting desegregation of public educational facilities, have any application in any case involving public recreational facilities?

The question presented to this Court, necessarily, narrows itself to the proposition: Was the District Court (and the Court of Appeals) compelled, as a matter of law, to enter an order requiring respondents to integrate the races immediately in all public parks and recreational facilities in the City of Memphis, notwithstanding the undisputed and unquestioned proof that it would be manifestly unwise to do so?

Neither the Court of Appeals nor the Trial Court has had an opportunity to approve or disapprove of respondents' plan for complete integration of all the facilities in question. The appeal below from the District Court was

taken before a complete plan could either be filed or acted upon.

Respondents do not question the settled and established principle of constitutional law that Negroes are entitled to make use, on a desegregated basis, of all public parks and recreational facilities in the City of Memphis. Inherent in the rulings of both lower courts was the fact that respondents have recognized this constitutional principle and are implementing it in a manner that is in the best interest of all the citizens of Memphis, both Negro and white.

The crux of petitioners' argument, on the principle of law herein involved, is that the administrative difficulties present in desegregating systems of public education would not arise in transforming a public recreational system. In petitioners' brief on the merits, at page 11, it is stated:—

> "In sum, the administration of a park system is less complex. Effectuation of complete desegregation of public parks requires little more than the removal of racial signs, and an announcement that racial distinctions will no longer be observed."

The proof in this case, as found by both of the lower courts, does not justify petitioners' purported statement of fact; but, on the contrary, the proof, as found by the lower courts, reflects that many administrative problems, as well as other difficulties, specifically set out in the District Court's Findings of Fact, would be created by immediate and total integration of all facilities, which could be avoided by a planned, orderly system of desegregation. Perhaps the most difficult phase of the desegregation problem is that part of respondents' activities dealing with summer supervised play carried out by the Recreation Department of the Memphis Park Commission. On this point, the Court of Appeals said:—

"The City of Memphis has a population of approximately 500,000 people, of whom 63% are white, and 37% are Negro. Approximately 100,000 children participate in one or more of the recreational activities sponsored by the Memphis Park Commission and carried on through its Recreational Department. This is a remarkable civic achievement on the part of the City of Memphis and its citizens. Of the 100,000 children participating, approximately 65,000 are white, and 35,000 are Negro. The Department sponsors many and varied types of recreational activities, including, but not limited to, competitive sports, such as baseball and basketball, as well as dancing and similar activities. The Recreational Department headquarters is itself operated on an integrated basis. All Negro Supervisors and Directors are paid on the same salary schedule as the white Supervisors and Directors; and the qualifications of white and Negro Supervisors and Directors are the same. The Recreational Department of the Memphis Park Commission is rated by competent authorities as the best in the South; and its recreational program for Negroes as the finest in the country" (R. 113).

The Superintendent of the Park System, in considerable detail, based on a survey of other cities and his experience of sixteen years as head of the Memphis Park System, testified that immediate forced integration of all the recreational facilities in Memphis would, necessarily, require many more Supervisors and instructors for the supervised playgrounds than are now available; and that the inevitable result would be a drastic reduction in the number of children, white and Negro, who could be afforded the benefits of supervised summertime play (R. 72, 73, 74). The likelihood of increase in juvenile delinquency, by throwing many children on the streets during the summer vacation season, is self evident; and it was shown in the proof

that one of the primary functions of the Recreation Department is to cope with this problem of juvenile delinquency.

Other testimony was adduced relating to various phases of the operation of the Memphis Park System. For present purposes, it is obvious that a vast system affecting the daily lives of over 500,000 people will have many administrative difficulties, if the relief prayed for by petitioners be granted. Petitioners contend that since Memphis has been free of racial disturbances in the past, upon desegregation of various public facilities, no delay in the field of recreation is warranted. This should be the best argument in favor of the moderate and gradual approach adopted by respondents. Good will and harmony in racial relations have prevailed in Memphis because of sound planning, in all phases of community life, that has taken into account the interests of all the citizens without overlooking the constitutional principles settled by this Court in the first **Brown** decision.

Several cases are cited by petitioners in support of their present position. A review of these indicates that none has any application here.

McLaurin v. Oklahoma State Regents, 339 U. S. 637;
Sweatt v. Painter, 339 U. S. 629;
Sipuel v. Board of Regents of University of Oklahoma, 332 U. S. 631;

(all decided prior to the **Brown Case**); and

Florida ex rel. Hawkins v. Board of Control, 350 U. S. 413;

each involved the right of a single Negro to immediate admission to a State graduate school. In none of the cases was any reason for delay advanced.

In **Booker v. State of Tennessee Board of Education, 240 Fed. 2d 689 (Sixth Circuit, 1957)**, five plaintiffs sought

immediate admission to graduate school of Memphis State University. A five-year plan was sponsored by the school. Judge Allen, for the Court of Appeals, pointed out that no valid reason for delay was given; that the school was admitting non-resident white students and further that Negro residents of Memphis would have to travel outside of the district to attend graduate school.

In **Mayor and City Council of Baltimore v. Dawson, 350 U. S. 877,** integration of bath houses and beaches in the City of Baltimore was sought. No plan of integration was presented to the trial court or considered. **123 Fed. Supp. 193.** The officials of Baltimore refused to recognize the constitutional rights of Negroes to make use of the recreational facilities in question on a desegregated basis, and their position throughout the litigation was that the doctrine of "separate but equal" facilities, as announced in **Plessy v. Ferguson, 163 U. S. 537,** applied.

On the other hand, the principles of equity, as announced in the second **Brown** decision, which are merely established rules for the formulation of decrees in equity, have been specifically applied in the field of public recreation.

City of Montgomery v. Gilmore, 277 Fed. 2d 364 (Fifth Circuit, 1960);

Cummings v. City of Charleston, 288 Fed. 2d 817 (Fourth Circuit, 1961).

To say that the **Brown Case** is limited to cases involving public educational facilities is tantamount to saying that a court of equity, in fashioning its decrees, has no discretion with respect to the manner in which it grants relief in cases involving large and complicated systems of public recreation. The **Brown Case** actually announced no new rule of equity; rather it recognized that:—

> "Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by

a facility for adjusting and reconciling public and private needs."

(349 U. S. at p. 300.)

As pointed out by the Court of Appeals, the principles of gradual desegregation, as announced by this Court in the **Brown Case**, have been applied in the field of public housing in the City of Detroit.

Detroit Housing Commission v. Lewis, 226 Fed. 2d 180 (Sixth Circuit, 1955).

Under familiar rules, the rulings of the two lower courts will not be disturbed unless contrary to some rule of equity or the result of improvident exercise of judicial discretion.

Meccano, Ltd. v. John Wanamaker, 253 U. S. 136; National Fire Ins. Co. of Hartford v. Thompson, 281 U. S. 331.

The discretion of the lower courts is, necessarily, broad and a strong showing of abuse must be made to reverse it.

United States v. W. T. Grant Co., 345 U. S. 629.

Petitioners, who have no authority to represent the interests of the 35,000 Negro children who participate in the supervised play sponsored by respondents, would have this Court adjudicate that the only way in which their constitutional rights can be implemented is by a blanket immediate injunction that, under the proof, could work a great injustice on thousands of children, Negro and white. They would have the Court overlook all considerations, however important to the welfare of thousands of people, both white and Negro, in the face of "unquestioned good faith of the officials of the City and Park Commission in attempting to comply, in the field of recreation, with the opinion of the Supreme Court in Brown v. Board of Education."

The Court of Appeals appropriately made reference to the attitude of petitioners as follows:—

> "Appellants made no specified objections to the plan which the district court approved. As the court stated in its opinion:
>
> > 'No valid objection to this plan in the Court's opinion is offered in this case. The plaintiffs merely say they want all of these facilities fully integrated now. Nothing else seems to matter.' " (R. 119).

The plan referred to by the Court of Appeals was the partial plan presented by respondents to the District Court. As already stated, the full plan of integration was not before either the District Court or the Court of Appeals.

Respondents recognize that the Memphis Park System and its recreational facilities must, under established law, be operated on a desegregated basis, and that the former system must be changed in compliance with the law as announced by the Supreme Court. The only question herein involved is the manner in which this desegregation should take place. The proofs introduced upon the trial, as found by both lower courts, supports the conclusion that gradual integration, as opposed to immediate integration, is in the best interest of all the citizens of Memphis, both white and Negro. No proof to the contrary was offered.

PINK PALACE MUSEUM.

Because of the fact that there may be an enforceable right of re-entry, under Tennessee law, in persons not parties to this case, in event of desegregation of the Museum, the trial court simply remitted to the courts of Tennessee the determination of a question of state law. No question of constitutional law will arise if the state courts hold

that integration of the races will not work a forfeiture of the City's title. The action of the trial judge was consistent with many decisions of this Court.

Harrison v. NAACP, 360 U. S. 167;
Thibodaux v. Louisiana Power & Light Co., 360 U. S. 25;
Meridian v. Southern Bell Telephone & Telegraph Co., 358 U. S. 639.

CONCLUSION.

The District Court and the Court of Appeals have found from the evidence that respondents have acted and are acting in good faith in attempting to comply with the equitable principles announced in the **Brown Case**, and that the familiar rules of equity applied in that case were not limited to the narrow field of public education.

The action of the Court of Appeals, in affirming the judgment of the District Court, should be affirmed.

Respectfully submitted,

J. S. ALLEN,

WALTER CHANDLER,

FRANK B. GIANOTTI, JR.,

THOMAS R. PREWITT,
Attorneys for Respondents.